A comparative study of the war powers of the President of the United States and the Prime Minister of Great Britain

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A COMPARATIVE STUDY OF THE WAR POWERS OF

THE PRESIDENT OF THE UNITED STATES

AND

THE PRIME MINISTER OF GREAT BRITAIN

BY

ANINDITA MUKHERJEE

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Date

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Thesis Advisor

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I would like to dedicate this thesis to my father, who has always encouraged me to think for myself, and pursue the truth, at what ever cost it may be.

This effort would not have been fruitful without the help of my Professors who have patiently guided and advised me through the course of this thesis. I would thus like to thank Dr. C. B. Joynt, Dr. F. T. Colon, and my thesis adviser, Dr. R. Menon.

"The woods are lovely, dark and deep
But I have promises to keep
Miles to go before I sleep
Miles to go before I sleep......."

Robert Frost
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ABSTRACT

This is a study of the war powers of the United States President and the British Prime Minister. The constitutional liberties and limitations that they are endowed with, their rights and duties, and the extent to which they use or misuse these powers will also be examined.

The heads of government of different nations, sometimes press to the limits of the law, or beyond, in the interest of national security. The degree to which they do so may vary from country to country. The role of the American President, George Bush, and the British Premier, Margaret Thatcher, will be analyzed. The "Persian Gulf Crisis," and the "The Falkland Crisis," have been chosen as sample cases to study whether they have acted in a dictatorial manner or in a law-abiding fashion.

There are several reasons for having chosen to do such a comparative study between the United States and Great Britain. The most important of them are, to examine the issues of accountability, and analyze what measures citizens can avail themselves of in a situation where their leaders may act contrary to their wishes.

Chapters one and three will analyze the powers of the United States President and the Prime Minister of Great Britain. Where as chapters two and four will study the Persian Gulf war and the Falkland war. These case studies will enable us to recognize
occasions where the leaders have in actuality extended their powers beyond their constitutional limitations, to create wars from potential situations. This will be done by analyzing the tactics used by the heads of states to win support from the Congress or the House of Commons and the people, and the politics and debates which ensued in the Congress or the House, before committing the troops to war.

The study will conclude by making some recommendations, which brings to light a few basic differences between the British and American political systems. It also enumerates certain advantages which they share, which if properly practiced, they will both benefit from. The recommendations also intend to suggest certain possible measures which will help in making the occupants of such offices more accountable to the electorate.
PREFACE

The founding fathers of the American constitution did envisage the possibility of the presidential office becoming dictatorial. This sentiment is aptly portrayed in James Madison’s comment, "The Constitution supposes what the history of all Governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it. It has accordingly, with studied care, vested the question of war in the legislature."¹ Thus persistent fears of a monarchical presidency forced them to deny to the United States’ President what they believed to be the power of the English king to make war on his own.

The Presidency is the fulcrum of the American political system. "The office took a quantum leap during the long reign of Franklin Roosevelt, who institutionalized it to fight, first, the Great Depression, and then World War II. Harry Truman, who seemed the antithesis of a "strong" President when he took office, wrested new economic powers from Congress and stretched the war-making power to a new limit when he dispatched U.S. troops to Korea in 1950."² This paper analyzes Mr. Bush’s performance as a President and also the role (or lack of it) of Congress in the event of the Persian Gulf Crisis.


Over the course of two centuries executive power in Great Britain gradually changed hands. The exercise of royal prerogatives was abandoned and the actual exercise of executive powers passed to the Parliament. Over the years the office of the Prime Minister, who heads not only the majority party but is also the recognized leader of the House of Commons, has grown in different dimensions. The role that the Prime Minister performs is an important one. As W.E. Gladstone said, "Nowhere in the wide world does so great a substance cast so small a shadow; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative."  

Sir Robert Peel was, in the strictest sense, the first of the modern Prime Ministers. According to Lord Rosebery, he was "the model of all Prime Ministers". Several others like Churchill, Gladstone or Disraeli have also left their mark. Some scholars are of the opinion that the term Margaret Thatcher served as the Prime Minister of Great Britain (May, 1979 - November, 1990), contributed the most to the growth of this office. Many refer to her decade in office as the "presidentialization of the Prime Minister's office." Firmly committed to the Western alliance, she strengthened British defenses and had close ties with two American Presidents, Ronald Reagan and George Bush. In 1982 she successfully pursued a war with Argentina over the Falkland 

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Islands. This paper will examine the manner in which she acted in the capacity of a Prime Minister and whether or not it was in accordance with her war powers or not.

Countries that occupy positions of strength do normally tend to manipulate situations to their benefit. This has led to the growth of the positions of their leaders and the role they play in world affairs. In the wars that have occurred in the past few decades, much importance has been given to last minute decisions made by a nation's executives. Thus, situations which require quick decision-making prompt the executive to act according to their own personal desires, which may sometimes very well be contrary to popular consent and constitutional norms. Hence, such developments demonstrate that chief executives have become less answerable and more dictatorial in their manner of functioning. In conclusion this study attempts to recommend certain reforms which will enable the representatives to be more accountable to the people they represent. Such an action will not only limit the leaders from being despotic but will also in the long run enhance world peace.
CHAPTER 1  An examination of the war powers of the
The President of the United States of America.

The Office of the President of the United States is the most powerful and the most discussed elective office in the world. Since the end of World War II, a unique combination of events and forces has been responsible for the expansion of presidential power. The international climate of the cold war, a constant increase in the arms race, regional clashes, and the instability of the Communist world all have provided the President with great range to conduct foreign policy. This in turn has empowered Presidents to act, not in accordance with congressional consent or advice, but according to their powers which have gradually evolved through twists and turns of interpretations.

The fear that the United States President has too much power has grown to be one of the most durable dilemmas of American politics. By stretching the war powers vested in him in Article II of the Constitution he could be as dictatorial as an erstwhile English king. This expansion of presidential power has been aided over the years by Congress, which has delegated vast discretionary power to the executive, the Supreme Court which has ratified it and the historians and academicians who have applauded it. Such an increase has led to the reciprocal effect of a diminishing growth in personal and private rights.

Article II of the United States' Constitution has been criticized to be vague. The
famous sentence, "The executive power shall be vested in a President of the United States of America" is an example of deliberate ambiguity. The calculatedly loose formation of this Article has resulted in the creation of a "joker" in the card pile of Constitutional powers - the political wild card left for each President to play when and how he, and the need and the mood of the people, decreed.

Due to the American experience with colonial governors appointed by the crown, the states were wary of strong executives. Thus, the Constitution aimed at underplaying the role of the executive and in turn emphasizing the power of the legislature. The founding fathers incorporated Montesquieu's idea of the separation of powers by which they pictured the legislature enacting laws, the executive executing them, and the judiciary interpreting them. The three departments were granted a veto power, which they could use as a check on each other, and prevent any possibility of gradual concentration and misuse of power by any department in the Government. This separation, in theory, makes a tyrannical concentration of power impossible. The judiciary can stop the President if he attempts to act illegally. The Congress, through its various powers can also pose a check on the President. Legislative control can


exercised to oppose the President if he uses his power contrary to their approval. The Congress with its power of the purse and budgetary action, can also control all Presidential expenditure which it thinks is unwise. It also have the generalized function of Congressional oversight. The threat of impeachment is the last check that the Congress can use against the President in a very extreme situation.

On a closer examination of the system of checks and balances, one realizes that there has been a considerable amount of erosion of the original concept, as envisaged by the founding fathers had incorporated it. This has rendered Congress even weaker and has consequently led to its marginal effect on the system and, is thus inadequate. These laws are not as effective in practice, in comparison to what they seem when written in the Constitution.

Over the years constant compromise on the part of the Congress, has led to the enlargement of Presidential power both in the realm of domestic and foreign affairs. The ambiguity of the vesting clause and that of the powers spelled out in Article II created an uncertainty which has generally been resolved in the favor of the President.

In recent years, much emphasis has been laid on the desirability of having a "strong" or "good" president. "The worth of a President seemed to be measured by the number of "hats" he donned - as Chief of State, Chief Executive, Commander in Chief, Chief Lawgiver, Chief Diplomat, Chief of Party, World Leader, Moral Leader,
Economic Czar, and even Chief of Police." President Kennedy's claim to being a "strong" President stems from his management of the Cuban missile crisis of 1962. The concept of a too powerful presidency was made more than obvious during the Vietnam war, where the nation engaged in an unwinnable war because the President had decided in support of it. However it was the Nixon Presidency that brought to light the possibility of the threat of impeachment. 

THE PRESIDENT'S WAR POWERS: AN EVALUATION

Under the Articles of Confederation there was no executive, and the power to make war was vested in the Continental Congress. This language was initially carried into the new draft Constitution. However Madison and Elbridge Gerry moved to replace "make" with "declare". This gave Congress the power to declare war but allowing the President discretionary authority "to repel sudden attacks." The idea of vesting this power with the Legislature was opposed by many, primarily because its proceedings were too slow. The founding fathers apparently inserted the clause "the President shall be the Commander-in-Chief ... into the actual service of the United States”, (Article II Section 2) simply as a device to prevent a hostile Congress from appointing a Commander-in-Chief who might take control of the armed forces from the hands of the President. Alexander Hamilton, who was undoubtedly an advocate of a powerful executive said that

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7 Roberts, "Introduction", President's Power?, 2.

8 Constitution, 27.
as a result of this clause the President’s authority "would be nominally the same with that of the King of Great Britain, but in substance much inferior to it."^{9}

It was President Abraham Lincoln who, with the outbreak of the Civil War, transformed this power into one of the most potent provisions in the entire list of presidential powers. He did so by joining it to the clause which declares that the President "shall take Care that the Laws are faithfully executed." "Lincoln proceeded to derive what he termed the ‘war powers’, to justify the series of extraordinary measures which he took in the interval between the fall of Fort Sumter and the convening of Congress in special session on July 4, 1861."^{10}

The authority to make war was vested in both the President and Congress. It is what Hamilton called "joint possession" and Madison called "concurrent authority." The idea was, to rest such a vital decision on the consent and belief of both branches of Government. As Abraham Lincoln wrote in a letter to his law partner, W.H.Herndon, "The founding fathers framed the Constitution so that no one man should hold the power of bringing the nation into war."^{11} A unanimous consent of the President and Congress


also implies that a good part of the nation supports the decision.

The President is the Commander-in-Chief of the Army and Navy, and the militia of the United States. He has the ultimate responsibility for the conduct of the military policy. The authority of the President over the armed forces guarantees civilian supremacy. Modern Presidents do not personally lead the troops during wartime, but they make decisions on deployment of the armed forces, as well as the strategy to be followed. Hence, as Commander-in-Chief the President may not only deploy the armed forces in support of American foreign policy but may also take the nation into war.

The United States Constitution contains few provisions for emergency powers. Congress has the power to meet emergencies by passing legislation. Under Article I, Section 8, Congress may \textit{declare war} and call "\textit{forth the Militia to execute the Laws of the Union, (to) suppress insurrections and repel Invasions} \ldots"\footnote{Constitution, 27.} Article II authorizes the President to convene Congress \textit{"on extraordinary Occasions"} for the purpose of enacting emergency legislation. The framers recognized that the President might have to begin military operations for defensive purposes before Congress could act. When a state of emergency is declared a President may seize property, organize and control the means of production, seize commodities, assign military forces abroad, institute martial law, control all transportation and communications, restrict travel, regulate the operations of private enterprise and call up all military reserves. Abuses of the presidential
emergency powers might lead to a one-man rule. It is this aspect of the presidential character that the Congress should foresee while formulating any laws that attempt to regulate or curtail the President’s war powers.

Article II, Section 2 of the Constitution states that "He [the President] shall have power, by and with the Advice and Consent of the Senate to make Treaties ...."13 Very seldom do we observe the President consulting Congress before he makes major treaty decisions. It is only after having made a decision that, the Congress is informed of it. Most agreements with foreign governments are never brought to the Senate. While the Congress is more responsive to local or domestic pressures, and to short-term needs; the President is more inclined to think of national and long-range interests. The obvious advantage the President has over the Congress is that he can speak with one voice, while the Congress due to bureaucracy and its size, takes much longer to voice its opinions.

Clearly there is a body of opinion to the effect that the war making power reserved to the Congress has been diminished. It is said that the executive branch has in many instances, most notably beginning with Korea, Vietnam, and now with the Persian Gulf crisis, assumed the practical war-making power and deprived Congress of any practical and significant role in the decision-making process. In the Constitution only Congress has the power to declare war, ("The Congress shall have Power To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures

13Ibid., 27.
on Land and Water" .... Article I Section 8), but by using the army and the navy, the President can take action such as to involve the country in war and to leave Congress no option but to declare it or to recognize its existence. This increase in power has not grown out of any specific act of Congress, but out of the obligation, inferable from the Constitution, of the government to protect the rights of an American citizen against foreign aggression. The exact extent of the President’s powers has never been defined. During periods of crisis the Supreme Court has, understandably, been reluctant to place limits on the powers the President may exercise in defense of the nation.

One should however, keep in mind that there are two sections of the Constitution, and not one, that deal with presidential war-making power. The one that gives Congress the right to make war, to raise and form armies and navies, and to support them, is presidential only to the extent that Congress mandates it. That is the one most often cited as the source of presidential authority as Commander-in-Chief and as the chief architect of American foreign policy. But there is another, and that is Article IV, Section 4, of the Constitution which provides that the government of "The United States shall guarantee to every state in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be considered) against domestic Violence."14

So in the event of such an insurgency or invasion the President is authorized to call upon the governors of the states to supply militia, etc. That clearly is a direct mandate to the

14Ibid., 32.
The general principle of the separation of powers does not permit Congress to interfere in the executive operation, nevertheless, it does have the power to oversee. The
Congressional power of oversight acts as an implied power. The only effective power that Congress does possess, is the power to collect information and hold hearings. Congressional committees can hold hearings and thereby can publicize, expose, intimidate, and threaten the executive. They cannot command. Nevertheless, this threat of publicity does work as a check on the President. The findings of a Congressional committee may be effective in awakening public opinion, which can then be molded with the help of the press. This gives rise to the possibility of a major conflict between the two, creating a deadlock. Whether in Korea, Berlin or Vietnam or the Persian Gulf, it is the President who acts and the Congress who reacts. Obviously the one who acts is at an advantage. "Congress of course, is also restrained from acting in foreign policy by that long-standing American tradition that politics stops at the water's edge, or by the corollary belief, at least since 1945, that foreign policy should be nonpartisan or bipartisan."\(^\text{15}\) However, the President can also use his political ability to shape public opinion by using the media to his benefit, thus manipulating divisions that arise within Congress. Thus the President may in fact turn this power, whose initial intent was to work as a check on his war making capabilities, to his advantage.

A main weapon that the President enjoys to protect himself against this congressional power, is the privilege that he enjoys namely, executive privilege. He can easily withhold all vital information by using this privilege, and thereby rendering all

efforts of Congress fruitless. This privilege provides the President with the right to withhold information or to refuse to appear before Congressional panels. It is used by the President to withhold information from Congress and courts that might jeopardize national security or embarrass the government. This alleged right has also been extended to Cabinet members and presidential advisers. The Constitution has made no provisions for such a privilege but many presidents have acted in a manner as if they are entitled to it. This term was invented during the Eisenhower Administration. Presidents contend that the doctrine of separation of powers protects presidential decision making from congressional and judicial scrutiny. Thus by withholding vital information, the President can drag an nation into a war, well before both the Congress and the public are aware of it.

The Congressional power of the purse and the budget control may seem to be another effective way in which Congress can control or terminate funds that are allocated to the funding of a war, thus in the long run intending to pose severe limitations to the Presidents exercise of his war powers. The budget that is enacted through legislative processes and written in the form of appropriation bills, have to be passed by both houses and are subject to veto. But, in reality, the Congress cannot stop the President from misusing this year’s money. They can only take an action in regard to next year’s budget. Such actions are easier said than done. Should the United States plan to enter into another conflict with Iraq, or engage in one in Bosnia, it would be next to impossible for the Congress not to vote any funds to the Department of Defense. Thus,
we see that in such circumstances, the President may freely finance a war.

Another problem Congress faces is the possibility of impoundment of funds by the President. The President can refuse to spend funds, temporarily or permanently, that Congress has allocated. This trend was initiated by Presidents Thomas Jefferson and Ulysses S. Grant in the nineteenth century. It has been practiced ever since, by other Presidents, namely, Presidents Truman, Johnson, Kennedy and Nixon. Article I, Section 9 states: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by the Law…." ¹⁶ This Congressional appropriation is viewed by Presidents as a ceiling on expenditures, not as a mandate to spend. The President impounds funds by ordering the Treasury not to release money. Therefore the President gets an additional control of the policies of the nation. This action presents a direct challenge to the fiscal authority of Congress. Congress tries to control the President in three ways. Primarily by setting spending targets in the budget; authorizing federal expenditure; and by passing appropriation bills. Thus in the event of an impoundment of funds, the power of the purse and budget control that the Congress enjoys loses it effectiveness.

In the past charismatic Presidents have managed to successfully avoid probing by the press and have still been popular with the people at large, when in actuality they were acting contrary to the will of the people. A very pertinent example of such an

¹⁶Constitution, 26.
occurrence can be cited in the Persian Gulf War. Statistics based on surveys conducted by major television networks such as CNN, ABC, NBC and others, revealed that approximately 80% of Americans were against the President’s decision of entering the war. But surprisingly, as months gradually passed, with the outstanding American victory in the Gulf, the scales of such reports tipped in favor of the President. The 80% Americans who were initially against him, were now chanting his praises. President Bush emerged unscathed. Not only was he elevated to the status of a hero, but his popularity ratings soared to an all time high. However, one should realize that such an occurrence happened, only because he was victorious. If the United States lost to Iraq, then the scenario would be reversed, as was in the case of the Vietnam war. Many times the misdeeds of the President are brought to light only after the occupant has finished serving his term, or when he is at the very end of his term. The executive thus goes unchecked, unless he makes a very obvious mistake, as was the case in the Watergate scandal. These powers of checks and balances aren’t as effective as they appear to be on paper. Thus one can conclude that the task of stopping the President from launching or engaging is more difficult if the war is one of a short duration. Longer the war continues, chances of Congressional influence increases.

When Presidents have been observed to be behaving in an arbitrary manner, it has been suggested the ultimate and the most definitive step that the Congress can take to check the President is through the process of impeachment. It is a quasi-judicial process for removing public officials from office. However, this process suffers from certain
weaknesses. Impeachment is a political action, phrased in a legal terminology, against an official of the federal government. The President can be impeached on criminal charges or on offence that would be indictable in a criminal court. By confining impeachable conduct to indictable offence, one would restrict the scope to such an extent, that acts which seriously undermine governmental practices, would not be taken into consideration. The rare occurrences of impeachments account for the fact that it is a time consuming procedure which is seldom employed. It is difficult to get a two-thirds vote in the Senate to convict and remove the president. Hence, this procedure does not operate as an effective check either. At best it protects against criminal violations of the public trust but not against presidential incompetence. However, its availability is a constant reminder to Presidents that their power is constrained, and that their tenure is not absolutely guaranteed.

There is no doubt that the Congress has enormous powers, but what it lacks is the tenacity and incentive to use it. If Congress could at least for one instance, hold an executive witness in contempt for improperly invoking executive privilege, it would be invoked a lot less in the future. As a result of the shelter the President enjoys from the executive privilege, he arrives at decisions based on the recommendations made to him only by his Cabinet members who are not popularly elected but are presidential appointees. They are not accountable to anyone other than the President and they therefore don’t represent the opinion of the electorate. There has been an increasing trend towards secrecy and of secret diplomacy. It is also true that Congress has made
an effort through the past few years, to check or curtail the President's war powers. By passing several pieces of legislation, Congress has made it mandatory for the President to report to and consult with the Congress. The objective behind all such efforts have consistently been to restore the balance between the executive and Congress in the area of war powers, as intended by the framers of the Constitution. Efforts are being made to reaffirm the congressional authority to declare war.

In the Twentieth Century, it has been observed that on several occasions Congress has acceded to executive action without its authorization in certain specific cases. These cases involve the rescue of American citizens in danger abroad, or the undertaking of various forms of military action. This brings us to the issue of the Congressional claim that the President does not wait for its authorization before committing the American army or navy into war. This accusation is not completely baseless. The first serious step in the unbalancing of the shared war-making powers, really became evident in the Korean War. In this instance, President Truman, with only the recommendation of his Secretary of State, Dean Acheson went ahead and committed the American army into force and serious hostilities. He did not wait for a joint resolution or for authorization from Congress. This decision initiated a vital change in the development of imperial presidency.

The original concept of a collective decision being made before committing the country to war, was replaced by the decision of one man, the Commander-in-Chief. The
intent of the founding fathers was overlooked by not only historians and political scientists, but Congress itself. Thus the genuine cause behind the growth of presidential powers is substantial congressional renunciation rather than Presidential usurpation. Another main contributor is the power the President enjoys, of being the only individual in whom rests the supreme and final authority to determine whether or not an attack is truly threatening to the security to the United States. This unilateral and unchecked judgement has resulted in a distinct rise in Presidential decisions that are arrived at without the consent or even the knowledge of Congress.

It has been noticed in the past, that if the President asked for a declaration of war Congress provided it; if he didn’t ask for it; war wasn’t declared. Often when the President ordered the deployment and use of armed forces Congress agreed with the substance of his actions and gave him support. Even if it disagreed with the President, Congress nearly always adopted the position that the President nevertheless had the authority to act as he did. It usually did not publicly object, thinking that by doing so it would be weakening the President and thus harm national security.

For twentieth-century America, the concept of "defensive war" has expanded to include military actions far beyond the nation’s borders. The horror of the Vietnam War changed Congress’ attitude enormously. After prohibiting further U.S. activity in Indochina with the Cooper-Church Amendment, Congress turned its attention to prohibiting the President from dragging the country into an unpopular foreign war against
the will of Congress. This led to the creation of the War Powers Resolution in 1973. As Senator Jacob Javits said, "The War Powers Act would assure that any future decision to commit the United States to any war making must be shared in by the Congress to be lawful."\textsuperscript{17}

\textbf{THE WAR POWERS ACT:}

The War Powers Act grants the President authority to raise, organize, equip, and command the armed forces. Although the Constitution expressly vests in Congress the power to declare war, only five of the eleven major wars fought by the United States were declared by Congress. The first and second War Powers Act were passed in 1941 and 1945 respectively, giving the president additional powers to deal with war situations.

The first War Powers Act which was enacted in 1941, gave the President a wide range of powers and responsibilities. The first three sections of this Act authorized the President to redistribute functions, related to the conduct of the prevailing war, to any executive agency, department, commission or bureau as he may deem fit. It also empowered him to transfer any duties or powers from one existing department, commission, bureau or agency to another. It enumerated that "any moneys heretofore and hereafter appropriated for the use of any executive department, commission,

bureau...shall be expended only for the purpose for which it was appropriated under the
direction of such agency as may be directed by the President...except to the extent
hereafter authorized by the Congress in appropriations Acts or otherwise."\(^\text{18}\) It also
enabled the President to abolish or eliminate any bureau, or office and report his
conclusions to Congress with recommendations as he may deem proper. Title II, Section
201, which dealt with contracts stated that the President had the sole authority to
authorize any department or agency of the Government to enter into contracts and into
amendments or modifications of contracts, without regard to the provisions of law,
whenever he deems such action would facilitate the prosecution of law. Section 301, of
Title III declared that the President had the power to investigate, regulate or profit any
financial action such as the transactions in foreign exchange, transfer of credits etc..
Section 303, allows the President to impose a censorship of communications between the
United States and foreign countries if he determines it fit because of public safety.

The second War Powers Act came in effect with the intention to plug up several
loopholes or discrepancies that the preceding Act had. Section 201 was amended to
include, that the Secretary of War, the Secretary of the Navy, or any other officer,
board, commission, or governmental corporation authorized by the President, may
acquire by purchase, donation or other means of transfer any real property that shall be
deemed necessary for military, naval or other war purposes. Title III which enumerates
the Priorities powers gives the President hand at obtaining information, testimonies,

\(^\text{18}\text{United States Statutes At Large, 1941-1942, Vol. 55, 838.}\)
evidences and making investigations. However, before concluding it states, "The President may exercise any power, authority or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe."19

The third War Powers Act enacted in 1973, is the most significant in limiting the President's powers. It recognizes emergency situations in which the President must have power to act quickly and decisively to protect the nation from foreign attack. It attempts to further limit the prospects of nuclear war by diminishing the prospects of a United States involvement in conventional war.

The War Powers Resolution was designed to ensure that the "collective judgement" of Congress and the President would apply to decisions concerning the committing of American troops into a war. Section 2(c) of the legislation says, "the Constitutional powers of the President as Commander in Chief to introduce United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions or its armed forces."20

19United States Statutes At Large, 1942, vol. 56, 180.

20Turner, War Powers Resolution, 172.
eight hours after American troops have been dispatched. In addition, the president must recall all armed forces within sixty days after the report - ninety days if "unavoidable military necessity" so required - unless Congress declares war or approves the military action. Congress however can order an immediate withdrawal of American forces by a concurrent resolution which is not subject to presidential veto. Attacks upon American forces are not enough ground for the President to go to war unless such an attack creates a national emergency. This act attempted to prevent the President from taking any decisions to wage war unilaterally. Congress was to be consulted more frequently or "in every possible instance" and would be involved in the decision making. Thus the President was presumably less free than previously to deploy American forces into combat.

Unfortunately, the War Powers Act has not served its purpose. Presidential authority as the Commander in Chief has not been undermined, nor has Congressional consultation increased. The act clarifies and further legitimizes the President's authority to commit American troops abroad without a formal declaration of war or formal authorization of Congress. "Thus, while unmistakenly strong in its intent, it does not in any way encroach upon the legitimate authority -note that I said 'authority' and not 'power'- of the President as Commander in Chief."\(^{21}\) The sixty days period that the President is authorized to continue a war, even without Congressional consent, can do

an enormous amount of damage. The Gulf war is an perfect example especially given the technological edge that the United States had over Iraq. Two months is an adequate amount of time for people to reflect on whether or not they want to be in the war, but it is also enough time to fully embroil a country in a war. At this point the damage is already done and the results of such a conflict, be they positive or negative, are irrelevant and irrevocable. In 1975, President Ford’s decision to undertake military operations in response to Cambodia’s seizure of the freighter "Mayaguez", was revealed to only a small number of congressmen, but only after he had already issued orders to initiate operations. In a similar manner during the United States attack on Grenada and Panama, the president deployed forces without the declaration of war.

Presidents who consider this act as a hindrance have found ways to work around it. It is only when the President’s policy has proven to be unsuccessful that Congress has withheld or withdrawn support. If the President is successful, then Congress tends to be supportive no matter what the legislative requirements are. However, if things do not turn out as expected then the critics start scrutinizing. This statement can be illustrated by the war conducted in Vietnam. However the duration of a war plays a major factor in such a determination. The Gulf war was not as a criticized as the Vietnam war based on this previous observation. It is because the Vietnam war was a failure that the American public along with the press and the Congress criticized the President. In contrast because the American troops were victorious in Iraq, the President was raised to the status of a hero. If by sheer misfortune the Gulf conflict had been a
repetition of the Vietnam war, then President Bush would have been denounced as being
dictatorial and would have been accused of acting contrary to Congressional consent.

When President Bush dispatched U.S. troops to the Gulf to resist the Iraqi
invasion of Kuwait, a debate quickly arose in Congress about whether the President could
lawfully commit forces to war without formal authorization from Congress. But this
issue proved to be a difficult one, because the framers of the Constitution made no
provision for the idea of collective security treaties. So while the Congress has the
authority to "check" on commitments made by the President that may likely endanger the
lives of the American youth by committing them to war, the president has the power to
decipher whether the situation is eminent enough to endanger the nation.

International Law prohibits any nation from the use of force and threat against the
territorial integrity or political independence of any state, as in Article 2 Section 4 of the
U.N. Charter. Article 2 Section 5 of the U.N. Charter enumerates that "All members
shall give the United Nations every assistance in any action it takes in accordance with
the present Charter, and shall refrain from giving assistance to any state against which
the United Nations is taking preventive or enforcement action." In this context it is
interesting to note that when the United States Senate ratified the U.N. Charter back in
1945, it rejected the proposal that the President would have to get Congressional consent
before committing American troops to hostilities that were authorized by the Security
Council. The United Nations Participation Act of 1945 which the Congress passed,
reads, "The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant of such special agreement or agreements the armed forces, facilities, or assistance provided for therein...."\textsuperscript{22} In this event it is important to differentiate and understand that the role Congress was to play was to be a limited one. As Hamilton says in the Federalist Papers, "Energy in the executive is ... essential to the protection of the community against foreign attacks. Congressional powers permitting interference with the conduct of foreign affairs by the executive were set forth in specific terms and were intended to be constructed strictly."\textsuperscript{23} Congress creates an army but the President has the power to determine where and how it will be deployed.

Chapter 1 has analyzed the powers of the President of the United States in relation to Congress. Along with this, the reality of the System of Checks and Balances, the scope and implications of the President's war powers and the limitations of the war power resolutions, have also been studied. The role of the Congress and its function to pose an effective check on the President's growing powers have also been evaluated. Chapter two will examine the role and powers of the Prime Minister of Great Britain. It will study the scope of the Cabinet Ministers, the House of Commons and Lords and the Monarch, to check the expanding war powers of the Prime Minister.

\textsuperscript{22} Turner, War Powers Resolution, 106.

CHAPTER 2  

An examination of the war powers of the

Prime Minister of Great Britain.

Great Britain has an unique constitution, which although unwritten, dates back to several hundreds of years. There are "laws, customs and conventions which define the composition and powers or organs of the State and regulate the relations of the various state organs to one another and to the private citizens."\textsuperscript{24} There are established procedures affecting the conduct of government and politics, which are adhered to.

Large parts of the constitution are documented. It is an aggregate of charters, statutes, common law, judicial decisions, standard works, customs of Parliament, conventions and the European Community law. The most important component of the British constitution are the unwritten maxims or the hardened principles or Conventions. These are rules, which though lacking the force of law, have been adhered to for so long that they are regarded as having special authority and are thus binding. Since a convention has no legal standing, the sanctions against a 'breach' have to be political, such as an adverse vote in Parliament or dismissal of a minister or government.

A large part of the British constitution is shaped by conventions. The way in which the prerogative powers of the crown are used, is now decided by conventions.

The rules governing the Cabinet system are based entirely on conventions. Conventions regulate the relation between the two houses and Parliamentary proceedings and also mold Commonwealth relations. They are not enforced either directly or indirectly, by the courts, but by the weight of public opinion, which expects politicians to behave in the true spirit of the constitution. Thus it is a moral not a legal imperative, upon which conventions depend. In the final analysis, both conventions and laws are a product of the philosophy and character of the British people.

The eighteenth century theory of the separation of powers which greatly influenced the formation of the American government, has played no fundamental part in Britain. Separation the British have discovered, can lead to deadlock and even to open conflict. Some connection between the three branches of government is therefore retained. While the Cabinet links the legislature and the executive, the Lord Chancellor links the judiciary and the executive and the Lords of Appeal, sitting in the House of Lords, links the legislature and the judiciary. Although there is no strict separation of powers in the constitution, the fundamental concept of the theory - that all powers should not be held in the same hands - is still recognized. However the British have developed a system of mutual checks and balances. The legislative authority of Parliament is divided between the House of Commons and the House of Lords, the power of the Cabinet is counter balanced by the criticism of Her Majesty's Opposition, and the administration of the Civil Service is examined by the legislature.
The British Parliament:

The 'sovereignty of the Parliament,' is established by granting to it the supreme power to make laws. The real legislative authority rests with the House of Commons, that part of the Parliament that is elected at regular intervals by the citizens. The essential nature of Parliamentary sovereignty is epitomized in two dicta of the eighteenth century constitutional lawyer, Sir William Blackstone. Quoting Sir Edward Coke, he says, "The power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds." To this he adds the observation, "what the Parliament doth, no authority upon earth can undo." 25

Since the British constitution is unwritten, it is rather inconvenient or difficult to enumerate the war powers bestowed on the British Prime Minister, as in the case of the American President. To derive a better understanding we thus have to study the various doctrines, according to which the various proceedings of Parliament are conducted. The Parliament of Great Britain by virtue of the fact of being a sovereign body, can pass, repeal, modify or temporarily set aside any law. Indeed Parliament can 'legalize illegality' or set aside decisions of courts. Since there is no difference between ordinary law and constitutional law, no arbiter is needed to judge whether Parliament should follow the special procedure required for constitutional law. Thus there is no Supreme

Court (as in the United States) to declare an Act of Parliament *ultra vires*, or null or void. The Supreme authority of Parliament covers not only its power to make law but also the conduct of its own business. Consequently no court can interfere with its proceedings. In the legal sense, Parliament consists of the Monarchy, the House of Lords, and the House of Commons. When we talk of the power of Parliament today we mean, effectively, the power of the Commons, which emerged as the dominant institution in the nineteenth century. The House of Commons has become the locus of power and is the epitome of Parliamentary sovereignty of England.

**THE HOUSE OF COMMONS:**

The formal procedure of the House of Commons is laid down in its standing orders, which are interpreted according to the precedents established by the previous speakers. The rules of procedure firstly ensure that the government can secure all the powers it needs to carry out its policy. They emphasize the importance of effective government. Second, the rules of procedure safeguard the principle that minorities, however small, must be given full opportunity to criticize the government. Thirdly, they embody that spirit of fair play which is inherent in the constitution and is essential to a system of government by consent. Fourth, the rules promote moderation both in the conduct and language of members. The authority of the Speaker should be supported by all, all speeches should be directed to him, and there should be no use of "unparliamentary language". Finally, attention must be drawn to the ceremonial
procedure which affords dignity to the meetings of the House and symbolizes fundamental relationships. Thus the functions of this House is to support, watch, criticize, and preserve legitimacy in the Government, to hold debates - the 'national palaver' as Carlyle put it - in which the government is given an opportunity to explain and justify its policies to the electorate, and which educates the public in the merits of alternative approaches to the leading issues of the day. It should also preserve the rights of the individuals in his relation with the administration, and should control the raising and spending of money.

The office of Prime Minister of England, has been considered to be the pivot of the government. The Prime Minister shares the same position with the Archbishop of Canterbury and is the principle advisor to the King. As the power of the monarchy declined, the power of the Prime Minister grew. Leadership of a political party is an essential step to becoming Prime Minister. It is now established that the leader of the largest party in the House of Commons, following a general election, is usually invited to become Prime Minister. The Prime Minister does not have a department to administer and this freedom gives him the opportunity to perform several wide ranging functions. He is responsible for the formation of the Ministry and can dismiss ministers as circumstances require. The Prime Minster selects the Cabinet for he is the Chairman of this body, allocates portfolios to the different ministers and determines the structure of the Cabinet Committees. He not only directs policy but also coordinates them. Being the leader of the House of Commons he controls its business and acts as its spokesman,
thereby communicating the government's decision to the sovereign. He is responsible for a wide variety of appointments and exercises considerable patronage. Lastly he meets with Commonwealth Prime Ministers at periodic conferences and with the heads of other government at summit talks. The Prime Minister has control of the two main bodies which are responsible for the machinery of government, the allocation of resources, and the coordination of the policy. The Prime Minister is the head of the Civil Service, First Lord of the Treasury, and as Chairman of the Cabinet, heads the Cabinet office.

Thus the Prime Minister's functions, although almost wholly based on convention, can be interpreted as he sees it fit. The office of the Prime Minister is what its holder chooses to make it. The Prime Minister also has a private office, headed by his principle private secretary and four assistant private secretaries, who are all civil servants. The assistant private secretaries are all responsible for a different area of policy: home affairs, foreign affairs, economic affairs and Parliament.

THE BRITISH CABINET:

The British Cabinet is the result of an extraconstitutional growth. Today its combination of political and executive work may be considered under four headings. First, it is the body in which many of the most important political decisions are taken. This is true of the decisions to go to war, settling the contents of the budget, approving the levels of expenditure on services etc. Second, it plans the business of Parliament,
it approves the details and timing of legislation which is to be laid before Parliament, for example, many aspects of foreign and economic policy. The Cabinet determines much of the work of the Parliament by preparing major bills, establishing its agenda, and organizing opinion and votes to get the legislation passed. Third, it is the arbiter in cases of policy differences between departments. Finally, it is the body which provides a general oversight and coordination of the policies of the government.

The main function of the Cabinet is that it is a policy-making body. All major national and international policies emanates from there. Most members of the Cabinet are also heads of major departments and are concerned to represent the departmental interests in the Cabinet. They therefore wear a departmental as well as a collective hat. The Cabinet derives its authority from having the support of a majority of members of the House of Commons and represents a fusion of the executive and legislature. Bagehot had likened to a hyphen which joins a buckle because it fastens the legislative part of the state to the executive part of the state. Many are of the opinion that the Cabinet government is really a Prime Ministerial government today. The Prime Minster can be likened to a master of the Cabinet who decides the agenda and has a monopoly of patronage and is comparable to the United States President. But however the position of the Cabinet is also strong. It is a shared responsibility. The power and position of the Prime Minister is dependent on the support and popularity that he enjoys amongst his colleagues. The Cabinet is still the source of political authority.
It is the duty of every government to summon Parliament before placing the forces on a war-footing. However, time and again governments have acted without Parliament's sanction. British governments have relied on their majorities and on the common sense of the House to ratify their acts. There is and can be no limitation to retroactive legislation. A Government can act first and ask for the approval afterwards. It can declare war though it has not the power to place the forces on a war footing. It can take precautionary measures in case war breaks out, as in 1870 the Cabinet authorized the War Office to exceed the vote for ammunition. It can enter into treaties without parliamentary sanctions and accept obligations even when legislation is necessary. Secret treaties were made in 1898 and 1900 and not published until after 1918. These are examples only of the great emergency powers which the British government possesses because it has behind it the support of a majority of the House of Commons. Yet however the majority must be treated with respect. Treaties, for instance, must usually be laid before Parliament. As Lord Palmerston said in 1841: "All formal engagements of the Crown, which involve the question of peace and war, must be submitted to Parliament....It would scarcely be consistent with the spirit of the British Constitution for the crown to enter into a binding engagement of such a nature, without formally placing it on record, so that Parliament might have an opportunity of expressing its opinions thereupon....But if the engagement was merely verbal, though it
would bind the ministers who made it, it might be disavowed by their successors."26

A British government could not undertake to declare war unless it had or expected the authority of Parliament. As Lord Salisbury said in 1901: "The British Government cannot undertake to declare war, for any purpose, unless it is a purpose of which the electors of this country would approve. If the Government promised to declare war for an object which did not commend itself to public opinion, the promise would be repudiated, and the Government would be turned out.... The course of the English Government in such a crisis must depend on the view taken by public opinion in this country, and public opinion would be largely, if not exclusively, governed by the nature of the casus belli."27 However, there is always a possibility of the Prime Minster declaring war and thereby creating a climate in which the approval of Parliament is almost guaranteed. This can be facilitated by the Prime Minster because he heads the majority party. But it is subject to the popularity that he enjoys within his party, in the House and with the people.

During an emergency, extensive powers are given to individuals to implement the broad wishes of the Parliament. Even in peace time some provision must be made for quick action to meet an emergency where there is insufficient time for prior consideration


27 Ibid., 483.
by Parliament. This was the purpose of the Emergency Powers Act of 1964, which provides that a proclamation might declare a state of emergency, if it appears that events such as industrial action, abnormal weather conditions, natural disasters, stoppage of essential supplies from abroad, and major breakdown of plants and machinery threaten to deprive the community of the essentials of life. Such Proclamations would normally last a month, but were subject to renewal, only if they were approved by both Houses.

On different occasions it has been noticed that Prime Ministers have taken it upon themselves to involve the country in a warfare, without prior Cabinet approval. Time and again the British Parliament has experienced the formation of a War Cabinet in the event of a war. Henceforth the Cabinet was superseded by a small War Cabinet which controlled foreign policy as one of the aspects of war government. In such a Cabinet the Prime Minister was pre-eminent. He became, in substance, an administrator. "Indeed, he created a special secretariat known as the 'garden suburb' because it was housed in temporary buildings in the garden of 10 Downing Street with whose assistance he was able to intervene in the various departments."28 The Foreign Secretary was not a member of the War Cabinet and became almost an under-secretary. The majority of the sessions of the War Cabinet consisted, therefore, of a series of meetings between members of the War Cabinet and those responsible for executive action. Ministers have full discretion to bring with them any experts, either from their own departments, or from outside. Britain has also seen the formation of a pre-war Committee of Imperial

28Ibid., 219.
Defence as before the first world war, whose main objective was to provide the plans necessary to defend the country and the Empire. This in turn led to the formation of an ‘inner Cabinet’ which alone was aware of the detailed plans being prepared. Thus the Cabinet was only theoretically in control.

The steps leading to the outbreak of war in 1914 were taken by the Foreign Secretary in consultation with the Prime Minster. Many decisions were based on informal consultations and subsequently the conduct of the war fell largely into the hands of committees of the Cabinet. The ordinary Cabinet was ultimately superseded by the War Cabinet of five members. The ultimatum given to Germany by Great Britain in 1914 was sent without prior Cabinet approval, though with the consent of the Prime Minster. In this manner the Prime Minister can ignore the opinions of the members of the Cabinet and go forth and decide on major issues while there prevails an emergency situation in the country. Prime Ministers have been known to misuse this power to their advantage. However, this can be only possible if the Prime Minster has a good standing within the House and with the people of Britain.

In Mr. MacDonald’s coalition Cabinet of 1932-5 there was an inner group known as ‘the Six’ composed of Messrs MacDonald and Thomas (Labour), Sir John Simon and Mr Runciman (Liberal National), and Messrs Baldwin and Neville Chamberlain (Conservative). In Mr. Chamberlain’s Government the decisions which led to Munich and eventually to the war of 1939-45 were taken initially by the Foreign Policy
Committee of the Cabinet, which consisted of nine or ten ministers. It was later succeeded by an ‘inner Cabinet’ consisting of the Prime Minister, the Chancellor of the Exchequer (Sir John Simon), the Foreign Secretary (Lord Halifax) and the Home Secretary (Sir Samuel Hoare), known as ‘the Big Four’. In Mr. Churchill’s War Cabinet there was a formal Defense Committee, which consisted initially of the Prime Minister, Mr Neville Chamberlain, Mr. Atlee, and the three Service Ministers, with the Chiefs of the Staffs in attendance.

Mr. Churchill’s functions as Minister of Defense were deliberately left undefined. He was able to assume in effect the supreme direction of the war because he established confidence among the authorities concerned, the War Cabinet, the officials, the service leaders and the House of Commons. As he himself has said, if definition has been attempted, "all the delicate adjustments...most of which settled themselves by personal goodwill, would have had to be thrashed out in a process of ill-timed constitution making."\textsuperscript{29} It was in theory and practice a one man show. The meetings were primarily for information, not for decisions. Thus the War Cabinet, while retaining control in principle, in fact delegated the ordinary conduct of the war to the Prime Minister.

The British Parliamentary system has been often observed to delegate work from the Cabinet to committees during the nineteenth century. The committee system is now

\textsuperscript{29}Ibid., 235.
an essential part of the Cabinet procedure. These bodies constitute the political system both during peace times and during the times of war. However, their role during any emergencies is a more powerful one. Prime Minsters, during times of war have utilized such committees to their advantage. Many Prime Ministers have frequently bypassed the Cabinet and appropriated ministers by working through ad hoc committees. They shield the Prime Minster from direct scrutiny from both the Parliament and the people. Committees were used during the Crimean war, and those on military affairs and coast defenses were reconstituted in 1856. Indeed, the War Cabinet discussed only general issues and its normal method of operation was through committees. A Committee of Imperial Defence was constituted in 1904 from the Naval and Military Committee set up towards the end of the previous century to study strategy and coordination. In theory, the Committee was merely a planning agency, in practice, since its plans were based on an alliance with France, it may be said to have committed the Government indirectly to a particular policy. During World War II the Committee of Imperial Defence was absorbed in the War Cabinet, and it was not reconstituted at the conclusion of the War. Today defense problems and their implications for foreign and economic policy are covered by the Defence and Oversees Policy committee of the cabinet which sits under the chairmanship of the Prime Minister. Thus the committee consisted of a few members which can discuss the details of proposals and report back to the full body with recommendations. There are five different types of committees. Those that constitute the whole house, Standing Committees, Select Committees, Joint Committees, and Private bills Committees. The Select Committees are further divided into sessional, ad
hoc and department committees. The *ad hoc* committees are set up by the Cabinet or the Prime Minister to settle, or to report on, problems of transient importance. The committee expired once the reports had been made to the Cabinet, and the problem seized to exist.

An important check to the Prime Minister's war powers can be posed most effectively by Her Majesty's Opposition. To govern effectively the British Government has to have the cooperation and support of the Opposition in Parliament. As Lord Campion puts it, "Democracy is a notoriously difficult system to work, and not the least difficult part of it is get a large representative body to function efficiently". To retain control over their government, the people should make their representatives accountable to them. The British, preferring flexibility, attempt to curb excesses of authority by a system of checks and balances. The main responsibility for ensuring that the acts and policies of the government are exposed to the glare of publicity and subjected to constant challenge, falls upon Her Majesty's Opposition, who is also regarded as Her Majesty's Alternative Government.

Democracy in Great Britain is based on the principle of consent. "Policy," as Quintin Hogg observes, "is the product not, as is generally supposed, simply of majority rule, but of government by discussion, of the interplay between the Opposition's

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reasoning and objection, and the Government majority in the lobbies.\textsuperscript{31} The main functions of the Opposition are to secure continuous accountability for the way in which the Government's powers are exercised. It cooperates with the government in the actual business of Parliament and manifest the vital principle of free speech in the British constitution. Since the real objective of the Opposition is to secure power in the next election, it examines the government's proposals, criticizes its policies, probes into its administration, and verifies its replies.

This aspect of the Opposition parties' role is very handy during the time when the Prime Minister may attempt to draw the country into a potential war-like situation. Thus in times of an emergency, it is the responsibility of the Opposition to pose effective questions and examine the government's decisions and actions. By criticizing the government's actions, it attempts to make the government explain and justify its policies and in turn, it educates the public about several issues that play an important role during such a time. Its weapons in Parliament are debates and questions, and outside, propaganda through the party organization by means of public meetings, television, radio, and the press. The House of Commons has a special time allocated to questioning. Question time, a development of the second half of the nineteenth century, is the real occasion when the procedure of the House of Commons allows a private individual or the opposition to scrutinize the functioning of the majority party. The time spent on questioning is nearly one hour up to 3:30 p.m. The question are interrogatory

\textsuperscript{31} Quintin Hogg, "The Purpose of Parliament", Ibid., 167.
in form, seek information or press for action, involve some degree of ministerial responsibility, and conform to constitutional usage and parliamentary etiquette. Naturally questions can be used as a weapon by the Opposition to embarrass the Government, especially where some fact damaging to its reputation can be discovered. The importance of the opposition therefore, is that, to the people, it is an emblem of liberty. Thus the interplay between the government and opposition is the life-blood, not only of the House of Commons, but of British politics as a whole. On certain matters, such as foreign relations, defense policy, Commonwealth affairs, and legislation of a non-party character, the Prime minister may occasionally consult with the Leader of the Opposition before finally committing himself, especially if the decision is likely to impose obligations on the future governments. On the other hand, in times of national crises, particularly those concerning foreign powers, the Opposition will signify the unity of the nation on a particular government policy by openly identifying itself with it. However, the Opposition is not always effective in criticizing the government. The fact that most Opposition leaders are members of the Privy Council and are therefore bound by an oath of secrecy, enables the government to satisfy the Opposition, without disclosing information in public. In short, although it is the function of the government to govern and of the House of Commons to criticize, there are limits to the scope of criticism; and if the government asserts that discussion is not in the public interest the house can do no more than accept the decision.

One of the unique features of the British Parliamentary system is the convention
of collective responsibility, which is practiced in the House of Commons. The concept of ministerial responsibility, covers both collective responsibility for Cabinet decisions and the individual responsibility which the minister bears for the work of his department. The convention of collective responsibility was originally developed in the late eighteenth century to prevent the King from playing off Cabinet members against each other. The Parliamentary Act of 1949 states that the ministers are collectively responsible. This has two features. Firstly, the Cabinet resigns if defeated on a major measure in the House of Commons and secondly, all ministers must accept Cabinet decisions or keep their dissent private. If they choose to speak out they should resign or expect dismissal. A minister who is not prepared to defend a Cabinet decision must, therefore, resign. If a minister does not resign then, he is ‘responsible’. From the ministers point of view, it means only that he must vote with the government, speak in defence of it if the Prime Minster insists, and that he cannot afterwards reject the criticism of his act, either in Parliament or in his constituency, on the ground that he did not agree with the decision.

This doctrine plays an important part both during a normal session of Parliament and more so during an emergency. It has its practical advantages. First it counteracts departmental separation, since each minister has to be concerned with policies of other departments. Second, it prevents the policy of one department being unilaterally determined. Since it is the Cabinet as a whole that decides, ministers are less likely to be over influenced by their civil servants. Third, it ensures that Cabinet decisions are based on principles and not on personalities.
The office of the Prime Minister has evolved over the years, to become what may be called a *primis inter pares* or the first amongst equals. It is obvious that this office does have the potential to become substantially dictatorial, depending on the manner in which the incumbent intends to execute the powers that are assigned to it. The Prime Minister of the United Kingdoms enjoys a wide range of powers. Starting from the fact that he is central to the formation of the Government, he selects his Cabinet ministers, allocates their portfolios, reviews the working of the Cabinet, is the lynch pin connecting the Monarch to the Parliament and much more. The ministers that are appointed by him enjoy their term in office as long as they enjoy his patronage. However, the truth behind this whole phenomenon is that the Prime Minster can afford to behave in such a dictatorial manner only when he has the support of his minsters in the Cabinet and as long as his party is in the majority in the Lower House.

The personality or the charisma of the individual plays a vital role in determining his popularity. Much tends to be overlooked or accepted both by his fellow ministers and by the citizens at large, only if the Prime Minster is of a dynamic disposition. He has to be a vote catcher whose fortunes and popularity will positively effect the fortunes of his party. Elections today, have become more of a plebiscite, where citizens vote for a person and not a party. The Prime Minister plays a rather pivotal role in British Politics. The dramatic transformation of the nature of world politics has also contributed positively to the rise of the Prime Minister’s power. With the evolution of the Nuclear age, it requires the heads of states to make quick effective decisions, during the
occurrence of a crises.

In conclusion, one can say that a lot depends upon what a Prime Minister chooses to make of this office, and what his colleagues make of it. Chapter two has examined the powers of the Prime Minister of England, in the context of the Parliamentary form of Government. The role of the House of Commons and the Cabinet ministers have also been evaluated. Chapter three will analyze the United States' involvement in the Persian Gulf crisis and the manner in which President Bush maneuvered the powers of the Commander-in-Chief and stretched it far beyond what the constitutional fathers had intended it to be.
CHAPTER 3 The Persian Gulf Crisis: An Analysis

The American involvement in the Persian Gulf crisis has been criticized to be an action primarily initiated by President Bush and a few of his advisors. This chapter will evaluate the exercise of the presidential war powers through the development and termination of the crisis.

Warning signals of the possibility of such a crisis could be observed as early as April of 1990. The Saudi Arabian ambassador to the United States, Prince Bandar bin Sultan during a personal interview with Saddam Hussein had been asked to convey a message to President Bush. A message that stated, Iraq would threaten to attack Israel only if it was attacked. In a conversation summoned between the United States ambassador to Iraq and the President of Iraq, on July 25, 1990, April Glaspie communicated to Saddam Hussein that the United States was seeking to improve its relations with Iraq. "We have no opinion on the Arab-Arab conflicts like your boarder disagreement with Kuwait."32

Even after an obvious movement of troops was observed towards the boarder that Iraq shared with Kuwait, ambassador Bandar and King Fahd of Saudi Arabia, repeatedly convinced the Bush administration that the movement of Iraqi troops was nothing more

than routine military exercise. On August 2, 1990, Iraqi forces invaded, ceased and occupied Kuwait at 4:00 a.m. (Kuwaiti time). Almost immediately, a public statement was issued stating that the United States strongly condemned the Iraqi military invasion of Kuwait and called for the immediate and unconditional withdrawal of all Iraqi forces. The President summoned an across the board halt to all U.S. trade including oil purchases with Iraq; froze Iraqi assets in the U.S. as punishment and did the same for the opposite reasons to Kuwaiti assets to protect them. He also called on other nations to take similar actions. An emergency session of the United Nations was convened. While the President sent his Secretary of State James Baker to Moscow, to get a joint statement to condemn Iraq, Thomas Pickering, U.S. Ambassador to the U.N., worked towards the passage of a stiff set of sanctions against Iraq at the United Nations.

Saddam had sought and received American and Israeli assurance he would not be attacked. He had protected the western flank with Israel, freeing him to do what he wanted on the east with Kuwait. The Bush administration along with Prince Bandar had been set up. The reality was that Iraq now owned 20% of the world’s known oil reserves. However, if Saddam Hussein were to take over Saudi Arabia, he would then control 40% of the oil reserves. He would not only be able to manipulate world oil prices but also hold the United States and its allies at his mercy. Terrified by the possibility of such an occurrence President Bush engaged himself in committing United States’ help to Saudi Arabia. He ignored repeated requests made by King Hussein of Jordan and President Mubarak of Egypt, to give them more time and allow the Arabs to
settle this dispute. While exchanging remarks with reporters he said, "We remain committed to take whatever steps are necessary to defend our longstanding vital interests in the Gulf." President Bush was upset that Kuwait had not asked for help from the United States until apparently a half hour or a few minutes before Iraq invaded. He was scared that the Saudis, who might be next on Saddam’s list, would ask too late and the United States would not be able to help. After meeting with his senior advisers namely, Secretary of State James Baker, General Scowcroft, assistant to the President for National Security Affairs, Secretary of Defence Richard B. Cheney and Chairman of the Joint Chiefs of Staff General Colin Powell, President Bush on August 4, 1990, he called King Fahd to offer American military aid. He then sent Cheney to Saudi Arabia to discuss deployment of troops, who on his arrival showed Saudi officials satellite photos depicting the Iraqi troop concentrations along their northern boarder. King Fahd of Saudi Arabia, after an initial hesitation finally agreed to permit the deployment of US troops on Saudi soil. Acting almost immediately President Bush ordered United States’ forces to Saudi Arabia.

There was however a distinct difference in opinion among the President and his advisors on the procedure that should be undertaken to solve the crisis. General Scowcroft felt that there had to be two tracks. First, he believed that the United States had to be willing to use force to stop this, and that it had to make that clear to the world. Second, he said that Saddam had to be toppled. President Bush agreed with Scowcroft on nearly all the recommendations he had to suggest. A contrasting line of thought was

offered by Baker and Colin Powell. They were both opposed to a show of force. They
realized that there had been no debate on whether to make the deployment. Likewise
there had been no discussion about the level of force. The deployment had been decided
by George Bush and the level of force by Operations Plan 90-1002. They felt that a
solution could be arrived at by negotiations and deal-making. The White House, in their
opinion, was speeding, not thinking through what it was doing. Cheney proposed a two-
part strategy: first, cooperation to defend Saudi Arabia against future attack; second, the
strangulation of Iraq. "Economic measures are important, but in future months, as
Saddam Hussein begins to feel the pressure, he could lash out and attack."\(^{34}\)

The U.N. Security Council, for the first time in 23 years issued mandatory
sanctions at its 2932nd meeting on August 2, 1990. It adopted Resolution 660 which
condemned the Iraqi invasion of Kuwait and demanded that Iraq withdraw immediately
and unconditionally all its forces to the positions in which they were located in August
1, 1990. Resolution 660 was adopted with a vote of 14-0, with Yemen and Cuba
abstaining. In the mean time President Bush had met with Prime Minister Thatcher of
Britain who declared her support for further action by the United Nations. "None of us
can do it separately, we need a collective and effective will of the nations belonging to
the United Nations."\(^{35}\) This was succeeded by the cooperation of France, China, Soviet
Union, Belgium, Germany, Turkey, Japan, Italy, Switzerland and the Arab League who

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\(^{34}\) Woodward, *Commanders*, 266.

not only froze their assets in Iraq and Kuwait, but also openly condemned the invasion.

Addressing the nation, on August 8, 1990, while announcing the deployment of United States Armed Forces, the President asked for the support of the citizens. "Today as President I ask you for your support in a decision I've made to stand up for what's right and condemn what's wrong, all in the cause of peace." He stressed on the part that established the idea that the effort was an international one and not of solely United States' concern. "We agree this is not an American problem or a European problem or a Middle East problem; it is the world's problem." The next few weeks saw the deployment of a considerable amount of United States forces accompanied by a token contribution from other nations of the world. Many felt that after successfully internationalizing opposition to the Iraqi aggression through the United Nations, Bush had jumped the gun and unilaterally ordered a de facto blockade, which perhaps was outside his legal authority, and which might have upset other members at the United Nations.

While addressing the Congress early in September President Bush said, "Iraq will not be permitted to annex Kuwait. It is not a threat, not a boast, that's just the way it is going to be. We will stand by our friends one way or another; the leader of Iraq must learn this fundamental truth."
The intentions of President Bush and his advisors became relatively clear when Secretary of State James Baker, while addressing a Senate committee on October 17, 1990, expressed the idea that the administration would consult with Congress, but not seek its prior approval for any attack against Iraqi forces. Many suggestions proposed by the Soviets as a possible resolution to the problem were ignored by the President and his Secretary of State. While answering questions of a House Committee on Capitol Hill Baker said, "To stop Saddam Hussein will require continued American leadership; but leadership sometimes does cost. It is going to run us to $6 billion for the balance of 1990." 39 He later went on to say that the American military umbrella now covers Saudi Arabia and all the small Gulf states threatened by Iraq. When asked about how long does he anticipate the troops being stationed in the Gulf, he said that the United States will be there for a host of factors but he could not say for how long.

Ignoring repeated requests from Powell for containment, and considering the results of sanctions, the months of October, November and December of 1990 saw the constant increase in military buildup in the Gulf. The President was committed to policy success. A trip was made by President Bush to Saudi Arabia on Thanksgiving Day. Outlining the American mission in the Gulf he said, "Making a stand in defense of peace and freedom, We are here to protect freedom, here to protect the future, here to protect

39Ibid.
innocent lives...."40

Despite repeated requests of negotiating peace made by tens of thousands of American citizens, Congressman, several nations of the world, and offers of mediation from Iraq itself, President Bush opted for direct confrontation, if Saddam Hussein did not withdraw from Kuwait. As 1990 came to an end, certain evidence observed during the military buildup demonstrated that the United States would attempt to force an early end to the crisis. The evidence prompted Senator Christopher Dodd of the Foreign Relations Committee to say, "If that decision is made inside the White House, then I think the President must bring the Congress back and seek support for that change in policy."41

Baker felt the foundation for the Gulf policy was not solid enough. The plight of the emir of Kuwait, his people, aggression and oil were not selling either at home to the American people or to the troops already mobilized. The polls showed that the greatest concern was over the American hostages in Iraq and Kuwait. He thus argued that the focus of the Gulf policy should be shifted to the hostage issue. While addressing Iraqi nationals on Iraqi Television, President Bush said, "America and the world will not be blackmailed by this ruthless policy [hostages]. Let me say clearly there is no way

40Ibid., 1802.

Iraq can win; Iraq must withdraw from Kuwait. While answering a question posed by a reporter he said that he would not be deterred from taking military action due to the presence of American hostages. "I feel very concerned for the Americans that are held against their will, but we cannot permit hostage taking to shape the foreign policy of this country and I won’t permit it [Iraq] to do that." While meeting with fifteen congressional leaders from both the houses and both the parties on October 30, 1990, he emphasized the plight of American, British, and French hostages who were not only being tortured but also suffered from mal-nutrition. In the hope that he will successfully woe the leaders he shifted the discussion to the situation of the United States Embassy in Kuwait city, where the detained diplomats were being denied food and water.

The administration still had not found a successful formula for speaking to the public. It was trying to keep the American people behind the policy, and explain to the troops what was being done and why, while attending to Congress, the United Nations and Arabs. It was also trying to manage the Israeli problem. Saddam Hussein was attempting to link resolution of the Kuwaiti question with resolution of the Palestinians’ grievances against Israel. Nobody was being able to evolve with a rationale for deploying forces with an offensive capability. The Secretary of Defence was not going to recommend any military action unless they were of success. In the meantime there was always a fear of the international coalition which was fragile, falling through.

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42Presidential Documents, 1804.

43Ibid, 1804.
Scowcroft was not confident whether the Democrat controlled Congress would support them. It would be a disaster to go to Congress and lose. While the presidential advisers pressed hard to convene Congress for an emergency session, the Democratic leaders preferred to hold hearings.

On November 28, former JCS Chairman Admiral Crowe testified before Nunn’s committee. He argued that sanctions should be given a fair chance before they are discarded. He also hinted that the President was leaning towards a war. Going to war - was a failure of policy. Retired former JCS Chairperson General Davis C. Jones reflected the same sentiments as Crowe. Their testimony which called for the continuation of sanctions instead of war made headlines in the next days paper and television. This deepened the crisis for the President and his advisers who had not yet expressed the true intent of the deployment of American forces.

The biggest break for the President came on November 29, 1990 when the United Nations adopted Resolution 678 which demanded Iraq’s unconditional withdrawal from Kuwait by 15 January 1991. It also authorized UN members "to use all necessary means" to bring about Iraqi withdrawal after that date. The vote was 12-2 with China abstaining and Yemen and Cuba voting against the measure. Suddenly, after having received the sanction that he was long seeking for, the President who had all along refused to admit that he was contemplating the use of force against Iraq, changed moods. As President Bush put it, the only way to bring peace to the Middle East was to either
cut Saddam Hussein to size or to topple him. With the support of the major economic and military powers of the world the President started preparing for the confrontation with Iraq in full gear.

Having won the United Nations endorsement, the Bush administration did think that it was now safe to answer some of Congress' questions in hearings on Capitol Hill. When Baker was asked why the Bush administration was stressing military intervention than economic sanctions, contrary to his own beliefs, he said that although economic sanctions might be having some impact on Iraq's economy, it was having no impact on Saddam Hussein's policy towards Kuwait. In fact waiting, as he put it, gave more time to fortify Kuwait, build chemical and biological weapons, and to try to split the coalition that now opposed him. He also expressed the idea that there would be no negotiations. Saddam would have to withdraw or else face disaster. When questioned by Senator Dodd why he ruled out negotiations, Mr Baker said, "Senator you are not suggesting that we go over there and negotiate something short of the resolution."44 Senator Dodd then emphasized the role and purpose of diplomacy, to which Mr Baker said that "This is not a show and tell; it is a serious effort to try and find a peaceful resolution."45 In conclusion he gave a chilling description of how the option of military force, if chosen, will be deployed. "Our aim is to insure that if force is used, it will be used suddenly,


45 Ibid.
massively and decisively."^{46}

In an open letter to Congressional leaders on the Persian Gulf Crisis on January 8, 1991, the President said that "it would greatly enhance the chances for peace if Congress were now to go on record supporting the position adopted by the UN Security Council on twelve separate occasions.... I therefore request that the House of Representatives and the Senate adopt a Resolution stating that Congress supports the use of all necessary means to implement UN Security Council Resolution 678.... Anything less would only encourage Iraqi intransigence; anything less would risk detracting from the international coalition arrayed against Iraq's aggression. Mr. Speaker, I am determined to do whatever is necessary to protect America's security. I ask Congress to join with me in the task. I can think of no better way than for Congress to express its support for the President at this critical time. This truly is the last best chance for peace."^{47} This letter marked the first time since the Vietnam War that a President had asked Congress to decide between war and peace.

To demonstrate the commitment of the United States to all aspects of the UN Security Council Resolution 678, including its "pause for goodwill" designed to give Iraq one final opportunity to withdraw unconditionally from Kuwait on or before January 15, 1991, President Bush finally agreed on a date on which Secretary of State Baker could

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^{46}Ibid.

meet with Iraqi foreign minister Tariq Aziz. The President told Congressional leaders that he was willing "to go the extra mile for peace." This meeting was necessary to convince Congress, the public and the governments of Europe and the Middle East that the Bush administration was still interested in a peaceful settlement. It was not clear what Secretary Baker and Mr. Aziz would talk about since the offer that was being made was subject to the same conditions as the previous negotiations, which made no compromises, or attempts of face saving or any attempt to discuss the Middle East Peace process. As expected, the talks held on January 9, 1991, at Geneva that lasted six and a half hours, failed. In fact, the President was quoted to have said, "I sent Secretary Baker to Geneva not to negotiate, but to communicate," which goes to say we don't want a diplomatic solution, hence we will not negotiate. With the possibility of war appearing to increase, the responsibility now fell on the shoulders of the Senate and the House of Representatives to debate upon the most fundamental responsibility of the Congress - the right to declare war.

**CONGRESSIONAL DEBATES:**

The US Congress opened its debates dealing with the Persian Gulf Crisis on January 10, 1991. The level of debate was extraordinary in its insight, knowledge, and conviction. An intellectual and philosophical high point in Congress' foreign policy history. Majority leader Senator George Mitchell, Democrat, introduced a resolution

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challenging the President’s authority to order an attack by himself and the wisdom of doing so now. Many others like Senators Nunn, Simon, and Kennedy joined Senator Mitchell in thinking that the grave decision for war was being made prematurely. They recommended that the US should wait and see if the embargo did the job, forcing Saddam to retrace his steps. Senator Joseph Biden of Delaware reiterated the same opinion, stressing constitutional dimensions. He said, "We are here today because our Constitution...commands the Congress to decide the gravest question any country faces: Should it go to war? Let there be no mistake about it, Mr. President, this is a question which Congress, and only the Congress, can answer...The meaning of the Congress in this case is clear, direct, and indisputable..... What’s the hurry for war? What’s the hurry?"49

An opposition to this line of thought was offered by Republican Senator Robert Dole, the Minority leader. He supported President Bush’s stand and questioned the fact that "How long should we wait? 30 days, 30 months or 30 years?.... Do we save lives by waiting six months or by waiting a year?"50 He said that such a signal if sent would take Saddam off the hook. A few other Republican Senators namely Senator Danforth, and Senator D’mado joined him in saying that what was required was a clear message to Baghdad that America speaks with one clear voice. One of the most passionate deliveries were made by Democrat Paul Wellstone of Minnesota. He requested the

Senators not to forget the parents of the young men and women in the Persian Gulf, who have not forgotten what war means to them in personal terms. Others like Orrin G. Hatch, Republican, felt that it was time for the Congress to join with the President and show that they are willing to back the use of force. He felt that Saddam will strike again "unless his invasion of Kuwait is decisively reversed." To him it was an issue of moral interest, in which liberating Kuwait as a nation and stopping the brutal violations of human rights was given priority. He also expressed the need to thwart Saddam Hussein's threat to launch a major international terror campaign, saying "if we let him get away with it, and we show that we are too weak to back the President and our young men and women over there, we are going to see an onthrust of terrorism all over the world. The only way to stop that is to show that we are willing to use force."52

Democrats like George Mitchell had different things to say. "He [George Bush] was not required to seek the approval of Congress to order that (first) deployment, and he did not do so. But if he now decides to use those forces in what would plainly be war, he is legally obliged to seek the prior approval of the Congress."53 He rightly pointed out that the President realized that he needed Congress's approval only after the United Nations resolution authorized him to use "all the necessary means", thus in the process he undermined the importance of the United States Constitution to the United

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51Ibid., 74.
52Ibid., 74.
53Ibid., 75.
Nations resolution. He emphasized on finding out what the wisest course of action would be. He stated that the issue was not whether force should be used or not, but whether war should be considered to be the last resort, an option only to be considered when all other methods have failed. The issue is how to best achieve that goal. Although he commended the President for having marshaled international diplomatic pressure and the most comprehensive economic embargo in Iraq's history, he accused him of not consulting Congress or building support amongst the American people while he decided on November 8 that he was doubling the American troops in the Gulf to 430,000 in order to attain a "credible offensive option." He simply just did it. The President thus changed the American policy from being a part of a collective effort into a predominantly an American effort, thus placing the country on a course towards war. This resulted in upsetting the "balance of the President's initial policy, the balance between resources and responsibilities, between interests and risks, and between patience and strength."  

He condemned the configuration of the troops in the Gulf, three-fourths of which were composed of American soldiers, saying that it was wrong and unfair. He voiced the conviction that since the President's initial policy of imposing an economic embargo was successful in limiting 90% of Iraq's imports and 97% of its exports, he should continue to pursue it or he should continue to "stay the course" and not engage in a war whose risks are unknown and which might result in an unknown number of casualties and deaths.

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54 Ibid., 77.
Senator John Heinz considered this matter to be one of life and death both for the thousands of Saudi Arabians and also for the millions of people that are threatened by Saddam's ruthlessness. He felt that Saddam was an individual whose lust for power will not end here and thus he could not be trusted. Since traditional diplomacy has not worked well with him the only alternative in his opinion was to give the "President the power he needs to do everything possible to avoid war." Senator Bill Bradley preferred taking other measures to remove Saddam from Kuwait. He said, "The question is, how do we get Iraq out of Kuwait? I prefer, for now, to strangle Saddam Hussein with economic sanctions which cost less in terms of American lives and dollars than would a massively military invasion that costs thousands of American lives, billions of additional taxpayer dollars and endangers our long-term vital interests in the region."

Senator John McCain was of the opinion that "it is only by supporting the President that we can achieve the goals of our national policy and meet our urgent national security requirements in the Middle East" and thus he felt that it was necessary to support the President enabling him to use force. Representative David Obey reminded the House, "For God sake, remember, the choice is not whether we have to go to war, it is whether we have to go to war now. Give us more time."

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55Ibid., 82.
56Ibid., 83.
57Ibid., 82.
58Ibid., 83.
As the debates in the Congress raged, a final decision was reached on January 12, 1991. The vote was close in the Senate - 52 to 47. The House approved it 250 to 183. The debates revealed a clear divergence of views within the Congress as to whether the United States should go to war with Iraq. There were those who favored giving the President the option of force believed that it was justified as a means of achieving the following objectives: the restoration of Kuwait’s legitimate government; the security and stability of Saudi Arabia and the Persian Gulf; the continued access to Middle East energy supplies; the neutralization of the threat to world peace posed by Iraq’s conventional, chemical, biological and nuclear weapons programs; and on a broader scale, the maintenance of a new world order in a post-Cold War environment. They were also convinced that economic sanctions would never succeed in persuading Saddam Hussein to withdraw from Kuwait, and that the longer sanctions were relied upon, the more likely it was that the allied coalition would collapse. The opponents on the other hand maintained that sanctions were indeed working and that persistence and patience would pay off in the long run as they had when sanctions were imposed on other nations. They believed that the costs of fulfilling United States objectives through force would be too high in terms of lives and financial resources, worsening economic and social problems on the domestic front. They also argued that a United States led war could result in the permanent destabilization of the Middle East and alienation from the West by Arab populations. They maintained that preserving the relative harmony of a post Cold-War era warranted the use of diplomatic, and not military, methods of settling disputes.
After acquiring Congressional support, President Bush, while conversing with the press indicated for the first time, that he would not use military force after January 15, 1991, if it was clear that Saddam Hussein had begun a serious withdrawal of troops. He said that if he (Saddam) started now to do what he should have done weeks ago, clearly that would make a difference. However, television coverage of the Gulf proved to the public that there was a most destructive array of military buildup ready to be despatched if Saddam did not withdraw before the January 15 deadline. The 12th January, also saw the Secretary General of the UN, Perez de Cuellar, second attempt to meet and talk with President Hussein. He made no progress. On the fourteenth Bush told a few Congressional leaders that there had been "no ray of hope" from Iraq for a diplomatic solution. As the United Nations deadline passes White House officials were heard to have said that, "It's no longer a question of whether, but when" coalition forces will attack. Although several antiwar demonstrations were held all over Europe and the US - War was inevitable.

On January 16, 1991, President Bush in a letter to Congressional leaders transmitting a Report pursuant to the Resolution authorizing the use of force against Iraq, said, "The United States has used all appropriate diplomatic and other peaceful means to obtain compliance with Iraq with UN Security Council Resolutions 660, 661, 662...that those efforts have not been and would not be successful in obtaining such

\[59\textit{Military Review}, \text{vol 71, Sept 1991, 72.}\]
compliances. Enclosed is a report that supports my decision." Addressing the Nation the same day, President Bush reiterated one more time that he was acting in accordance with the UN Resolutions and with the support of Congress, in the effort to help free the small and helpless state of Kuwait. He said that the world could not wait any longer. Sanctions, though having some effect, showed no signs of accomplishment. They were tried but they alone would not force Saddam out of Kuwait. The liberation of Kuwait had begun.

THE EFFECTS OF THE WAR POWERS RESOLUTION ON THE GULF CRISIS: AN ANALYSIS

The responsibility of governing in the United States is shared between the President and the Congress. Although the Congress was the sole power who is empowered by the Constitution to declare war, foreign affairs was all along considered to be in the jurisdiction of the President. Except for very few cases, little did it matter what Congressmen thought or did. But, for example, Congress' "refusal to ratify the Versailles Treaty or to join the League of Nations, and the passage of neutrality legislation in reaction to President Roosevelt's desire to 'quarantine the aggressors' in Europe in 1937-9" were considered to be rare exceptions to the rule. However after having been overridden during the Vietnam crisis, the 1970's saw a Congress which actively participated in foreign policy decision making. President Nixon's veto of the

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new War Power's Act was overridden, restricting his authority to perform the role of a Commander-in-Chief. This set a new precedent. Power was now to be shared even in matters concerning foreign affairs. "Congress's foreign policy role can also be seen in terms of three basic postures: those of enabler, negator, and initiator.... First, the Congress serves as enabler, by acquiescence or with enthusiasm permitting the Executive to carry out its intentions in international relations. Second, it performs as negator, by obstruction or negligence prohibiting or inhibiting the President from putting into effect what he regards as being in the national interest. In its third and more positive role, the 'first branch', as Congress likes to think of itself...often acts as initiator, coming up with innovative ideas or substituting its own policies for that of the Executive." 62

Congress's ability to perform foreign policy functions effectively has been fundamentally altered by the communications revolution. The technological revolution allows every Congressional office instant access to data from almost anywhere in town, thus helping in overcoming the communications gap in relation to a gigantic federal bureaucracy. Second, a revolution has occurred in congressional sophistication, brought about by the attraction to legislative work of qualified experts. Third, the Freedom of Information Act, resulting from the Church Special Intelligence Committee investigation in the mid-1970's has all but destroyed the frequently used Executive argument that 'If you knew what we know but cannot tell you you'd have to agree with us'. Fourth, Congress has become more vigorous in exercising its power of oversight because of a

62Ibid., 552.
loss of Executive credibility during the Iran-Contra affair. However no matter how informed and investigative Congress has become, the fact remains that it cannot always get from the President, the exact answers and commitments it wants to. An evaluation of the War Powers Resolution will help us prove this point.

The terms of the War Powers Act restrict the President from committing US forces into a potential conflict unless Congress explicitly authorizes combat in advance or ratifies it within a 60-day period after it commences, failing which he has to terminate their deployment. The fundamental problem with this resolution is that it does not contain any sanctions against the President if he fails to comply with any of the rules. In fact, Presidents have cooperated, in the sense that their performance has been consistent with the act without their conceding that it must be. To interpret the laws in whatever manner he thinks correct, always remains to be a temptation to the President. President Bush drew a "line in the sand" limiting further Iraqi aggression by deploying approximately 230,000 American combat troops to the desert of Saudi Arabia. This rekindled a long standing controversy with Congress concerning the proper exercise of war powers as stated by the constitution and also called for a reevaluation of the War Powers Resolution. In more than many ways President Bush’s handling of the Gulf Crisis has proved that the Resolution has become a ‘dead letter’, with the President openly ignoring it. By giving the Congress the authority to "declare war", "to raise and support armies", to provide and maintain a Navy", and "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers..." and by
giving the President the powers of the Commander-in-Chief, the framers of the constitution intended to ensure that the decision to wage war would not be made precipitously, and certainly not by a single individual. "Unfortunately this division of war powers has evolved into an elusive 'zone of twilight' in which both the President and the Congress have concurrent authority, but are unable to agree how it will be distributed and exercised."  

The primary flaws can be categorized as, congressional overstepping, the consultation requirement, the reporting requirement, terminating the use of Armed Forces, and the Concurrent Resolution provisions. Controversies have arisen when the Executive has felt that Congress has overstepped its boundaries and has tried to directly interfere with the President's emergency powers. The second clause of Consultation requirement does not clearly enumerate who the president is to consult with and when. President Bush did consult with select senior members of Congress but he certainly did not seek congressional approval. He did meet with 170 members of Congress who supported his handling of the crisis, when he returned from Kennebunkport, Maine, on August 28, 1990. The scant consultations that did occur (with the rest of Congress) were more of a form of after-the-fact notification of actions already taken. To comply with the War Powers Resolution President Bush did send a letter to Congress on August 9, 1990 updating them about the situation in the Gulf and also addressed a joint session of

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Congress on the Iraqi crisis. When on August 5, 1990, President Bush announced, with no congressional consultation, that Iraq's invasion "will not stand," members of the Congress applauded. Few then cared how this would be undone, or when and even whether Congress might be asked to approve its undoing. David Boren (D-Okla.), Chairman of the Senate Intelligence Committee, when asked on September 12 whether the president should have at least consulted Congress before sending troops to the gulf, said, "No, I think the President should be supported on that point." The reporting provisions requires the President to file a report with the Congress within 48 hours of the introduction of United States Armed Forces. Presidential action is then subject to a 60-day period within which if Congress ratifies it the troops continue to stay, but if the opposite occurs then the troops will have to be withdrawn. However, commitment of troops enables the President to rally support from the people, thereby, pressurizing Congress to officially declare. In reporting the deployment of approximately 230,000 armed combat troops to Saudi Arabia in response to Iraq's invasion of Kuwait, President Bush did not mention under which portion of section 4(a) he was filing his report. He also went one step further in avoiding the 60-day clock by expressly stating in his report that "I do not believe involvement in hostilities is imminent." Surprisingly the Congress showed great reluctance to challenge this statement. Later when he doubled his troop strength on November 8, 1990, and openly admitted to the media that this move had offensive intentions, his report to the Congress made no note of it. "I... want to


emphasize that...the mission of our armed forces has not changed. Our Forces are in the Gulf region in the exercise of our inherent right of... self defense... In my August 9 letter, I indicated that I did not believe that involvement in hostilities was imminent.... My view on these matters has not changed. "66 The section that deals with the termination of the use of Armed Forces has never been very effective. Congress is yet to challenge the President on an issue and independently start the clock. Every time that the clock has been started it has resulted in a compromise resolution. This resolution has been characterized as a 'blank check' allowing the President to make and conduct war for any reason, wherever he pleases. The 60-day clock does little to limit the President’s authority as Commander-in-Chief.

The Concurrent Resolution provides Congress with the power to compel the President to terminate the engagement of United States forces immediately, when the military deployment has not been previously approved. However this clause has often been seen to be unconstitutional thus reinforcing the claim that the resolution has become nothing more than a 'dead letter'. President Bush, despite having ample time for consultations with Congress and full and complete compliance with the terms of the Resolution, did neither. On November 19, 1990, 54 members of Congress joined together in filing a law suit against the President in federal district court to compel him to comply with the resolution. The suit sought to enjoin the President for having initiated offensive attacks without first seeking for Congressional support or "a declaration of war

66Ibid., 97.
or other explicit congressional authorization". The court employed a tool of judicial abstention to avoid deciding the case. The President, however, continued throughout 1990 to ignore the Resolution as well as Congress’s insistence that he comply with its terms. It was only in January of the next year, on being pressured by a few of his well-wishers that he sought Congressional support to start the war. However, to get President Bush to seek Congressional approval prior to attacking Iraqi forces in Kuwait, Congressional Democrats had threatened to cut off funds for Desert Shield on December 29, 1990.

When President Bush finally requested legislative approval in a letter to Congress January 8, 1991, he never acknowledged that statutory authorization was constitutionally required. In fact the President said that he still believed he had the authority to act without legislative authorization. "I don’t think I need it," he said the next day, and the White House aides hinted that the administration had the right to defy any restrictions that Congress might impose. It is interesting to note that all major decisions of deployment of US forces to the Gulf were primarily made between November and December, the time the United States Congress was in recess. This is especially true of President Bush’s announcement that he planned to double the size of the force in the Gulf, which came about a week or 8 days (November 8, 1990) after Congress adjourned (October 28, 1990). Even while delivering the State of the Union Address on January 29, 1991, President Bush said, "Our purpose in the Persian Gulf remains constant: to drive Iraq out of Kuwait, to restore Kuwait’s legitimate government and to ensure the
stability and security of this critical region. We realize that our responsibility to be the
catalyst for peace in the region does not end with the successful conclusion of this
war. Operation Desert Storm proved to us that, unless immediate remedial action
is taken to craft a workable alternative to the War Powers Resolution, future conflicts
will be pursued not in accordance with its terms, but despite them. There is, however,
another alternative suggested by the gulf war experience. It is, simply put, that no
amount of redrafting will produce an alternative satisfactory to both Executive and the
Legislative branches of government. It is highly significant that the federal district court
refused to rule on the suit brought to it by certain members of Congress.

CONGRESSIONAL INFLUENCE IN PRESIDENTIAL DECISION MAKING: AN EVALUATION

In January 1991 the Gulf debate raised fears of an acute diplomatic
embarrassment - the possibility that the US Congress might not support the President’s
bold initiative, which might in turn lead to the collapse of the international coalition and
therefore the policy against Saddam Hussein. However, President Bush successfully
steered clear of any such humiliation. Many have criticized the congressional debates
saying that they were effectively over long before they began. Those of this opinion felt
that the debates should have begun on August 7, 1990, the day after Secretary of Defense
Dick Cheney announced the U.S. commitment to defend Saudi Arabia in the event of an
attack by Iraq. The decision to seek the blessings of the United Nations for the use of

force against Iraq was part of a larger more cynical strategy of the Bush administration to bypass Congress and its constitutional authority to commit military troops to offensive operations. "In going first to the U.N.," said a senior administration official, "we boxed the Democrats in very nicely."68

The invasion of Kuwait took place just as the congressional election campaigns were getting underway in August. The President's immediate action in terms of what he called a 'new international order' based upon the lessons drawn from the Second World War drew instantaneous support and almost universal support. His step-by-step mobilization of United Nations support was acknowledged to be masterful. There was simply nothing to argue about at least on the world stage. But when, right after congressional elections, he doubled the number of United States troops in the Saudi desert, in order to assume an offensive posture, rumblings of dissent began. While there was broad public consensus on defending Saudi Arabia and applying sanctions against Iraq, the question of actually going to war had not been on the table during the congressional campaign. Many others, which included several Congressman identified the real issue to be not the 'new international order' but oil. Some argued that Congress should immediately have challenged Bush, while others argued for a special session of Congress after Christmas to strengthen his diplomatic hand. Very few questioned how restoring an emir in Kuwait served the caused of democracy or why the United States was committed to defend a feudal monarchy where women could not drive cars,

adulterers were stoned and American chaplains would be forced to conduct their religious services clandestinely. Opposition to the President was made to look unpatriotic or irresolute.

Chapter VII of the UN Charter requires the negotiation of special agreements by the Security Council prior to requisitioning forces from member states. Even if the argument were correct Secretary Baker knocked out its scaffolding on December 6, 1990, when he testified that Security Council Resolution 678, permitting the use of force against Iraq, did not oblige the US to use force but merely authorized it. After that acknowledgement, Resolution 678 could not be called into service to substitute for explicit congressional approval. More importance was attached to the meetings that the President and his Secretary of State pursued with several world leaders, than trying to negotiate with Saddam Hussein.

By January the issues had become resolution. The President did not initially feel that he needed to demonstrate that he had the support of Congress to approve a resolution authorizing the use of ‘all necessary means’ to drive Iraq out of Kuwait. A senior administration official was quoted as having said, "we don’t like the notion that the President is afraid to go to Congress because he fears he will lose....We need to put that notion to rest."69 Much was at stake. To put it starkly, had the President failed to get the authorization to go to war which, observers felt, armed with the arguments of White

House lawyers and fearful of an unravelling of the coalition he had put together, he would have gone ahead anyway, having already claimed that he had all the authority he needed. Three days after getting congressional authorization, a close aide was heard to have said, "given who George Bush is, he made the intellectual decision quite easily that this was something worth going to war over. This week the abstract of August turned into the reality of January, but there was always an inevitability about this." This prospect angered many, who felt that they were being manipulated, forced to go along when they had serious and essentially non-partisan reasons for not doing so yet. To have withheld approval would certainly have produced a constitutional crisis on who controls going to war, the last thing needed at the point where diplomacy had produced an international consensus.

Ultimately, Congress had to take some action, if only to vindicate its constitutional war powers. With the advent of the Cold War nuclear weapons, a mind-set came in that called for someone who could decide quickly whether to use them or not. For Congress that meant, they must act sooner than later, or their options would be foreclosed. "The President’s tactical concession of the utility of such action may prove in the end to have strengthened the ability of future Congress’ to insist upon a similar involvement in the use of force in other crisis. Once the vote was taken, the constitutional debate was over. With the ground war brief and brilliant, for a time the euphoria seemed deafening (particularly from Republican politicians taunting Democrats

who had voted for more time) and the issue of the wisdom and indeed even the necessity of war brushed aside. 

Chapter three thus studied the manner in which President Bush successfully maneuvered the country into actively participating in the Gulf crisis, a determination that he had held from the very onset of the crisis. It also reveals to us how the Congress even after engaging in elaborate debates was fruitless in tying down his hands. Chapter four will evaluate a similar role enacted by British Prime Minister Margaret Thatcher, during Britians involvement in the Falkland Crisis.

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71 Olson, "The US Congress", 559.
CHAPTER 4  The Falkland Island Crisis:  
An Analysis

About 4,000 Argentine troops invaded the disputed Falkland Islands Friday, April 2, 1982. They overwhelmed 80 British Royal Marines defending the rocky, windswept crown colony 400 miles southeast of Argentina in the South Atlantic, an island mainly inhabited by sheep farmers of British stock. The crisis had grown from an apparently minor incident when a group of Argentine scrap merchants landed on the tiny Falkland’s dependency of South Georgia three weeks previously to dismantle a rusty old whaling station. Britain said they ignored British immigration procedures and hoisted Argentina’s blue-and-white flag, and a war of nerves followed between the two countries. On April 2, Argentine marines seized the islands after a brief clash with its 80 British marine defenders and Prime Minister Margaret Thatcher was presented with Britain’s gravest international problem since the Suez crisis of 1956.

Britain immediately severed diplomatic relations with the military government in Buenos Aires. Margaret Thatcher announced on August 3, 1982, a freeze on Argentine assets in Britain. Speaking in a crisis debate in Parliament, she said that the government was taking emergency action to block the movement of gold, securities and funds held in Britain by Argentine Government or investors and suspended further government export credits for Argentina. The United Nation’s Security Council in an emergency session passed Resolution 502, which demanded the withdrawal of Argentina, an
immediate cessation of hostilities and the beginning of negotiations between the two governments. The vote was 10 to 1 with four abstentions from: the Soviet Union, China, Poland and Spain. The only country that voted against the resolution was Panama.

Margaret Thatcher called for an emergency session of the House of Commons on April 3, 1982, the first weekend sitting of Parliament since the 1956 Suez crisis. The invasion set off an uproar over the government's handling of the crisis. Her government came under fierce attack from the opposition Labour party and the British press for failing to take measures to prevent an Argentinean takeover of the islands, which had been a British colony since 1883. Opposition members of Parliament shouted for Mrs. Thatcher's resignation and newspapers ran banner headlines declaring "Shame" and "It's War." "The three on trial today are the Prime Minister, the Foreign Secretary and the Defence Secretary...If they are not capable of answering why this happened they should go-and the sooner the better," said Labor's defence spokesman John Silkin.72 "To us its home, and we want it back," Falkland Islands legislator John Cheek told reporters in London, where he urged Britain to defend the 1,800 British subjects living in the islands, called the Malvinas by Argentina.

Speaking during the emergency session, Thatcher informed the ministers that Britain had ordered a large Naval Task Force to the Falklands and that the British


73Ibid.
Aircraft Carrier "Invincible" would set sail on April 5, to lead the Task Force. She however declined to say whether the fleet would be ordered to engage the Argentine forces which occupied the Falkland Islands through an "unprovoked aggression." She did not disclose the size of the Task Force, but military sources put it at between 35 and 40 ships - representing about two-thirds of the Navy's fighting strength. She made clear that she wanted to restore British rule over the islands by peaceful means. Labour Party leader Michael Foot laid full blame for the invasion on Mrs. Thatcher's ruling Conservatives, declaring that the 1,800 Falkland Islanders had been betrayed "and the responsibility for the betrayal lies with the Government."

Before the debate began there was a demand from within Conservative ranks for the resignation of the Foreign Secretary Lord Carrington and Defence Secretary John Nott over their handling of the crisis.

On April 5, 1982, British Foreign Secretary Lord Carrington and two of his senior ministers, Deputy Foreign Secretary Humphrey Atkins and Minister of State Richard Luce, resigned over their failure to prevent Argentina's capture of the Falkland Islands. Defence Minister Nott had also offered to resign but was stopped from doing so by the Prime Minister who said, "It is vital you continue as our forces prepare for the possibility of Armed Action....I have the fullest confidence in your ability to carry out the crucial tasks ahead." Thatcher quickly replaced Lord Carrington with Francis Pym, a former Defence Secretary and the leader of the House of Commons.

74 Reuters North European Service, 3 April, 1982.

resignation of Humphrey Atkins paved the way for further criticism faced by the Thatcher Government. He admitted to having misinformed Parliament about details of the government's knowledge of the invasion.

Operational decisions during the crisis had been made by the inner Cabinet including Thatcher, the new Foreign Secretary, Francis Pym, Defence Secretary John Nott, Paymaster Cecil Parkinson and the Chairman of Thatcher's Conservative Party. The Prime Ministers full Cabinet had been kept informed on a less frequent basis of the inner Cabinet's decisions and her overall strategy. Some Cabinet ministers privately had questioned whether she had given the negotiating process enough time and emphasis. But backed by her strong support in the Cabinet, Thatcher appeared to be pushing to limit her authority as Prime Minister to exercise her own discretion.

Enumerating Britain's policy Defence Secretary John Nott told a stormy session of Parliament on April 3, 1982, "We intend to solve this problem. We will try by diplomatic means, but if these fail-and they probably will-a military solution will be necessary."\(^{76}\) It was apparent that the country was all geared up for a combat, despite warnings of caution by some politicians and media commentators. It was evident in the warm send-off given to the aircraft carriers "Invincible" and "Hermes", submarines, destroyers, frigates and support ships, fighter planes, and helicopters that left Portsmouth's historic Naval base bound for the Falkland Islands. As the Falklands were

\(^{76}\)UPI, 3 April, 1982.
6,900 miles and at least two weeks sailing time, where the Argentine military reportedly continued to reinforce its position, Britain had breathing space to find a diplomatic settlement and head off a showdown with Argentina. International economic sanctions against Argentina and a sea and air blockade of the Falklands were among the options being considered, according to diplomats. Although it would take time, they said it was possible for the British task force to eventually cut off the Argentine troops on the arid windswept islands from military supplies, food and even water.

England then reached out to the nine other members of the European Community and allies like the United States to impose tough economic sanctions, despite West Germany's extensive and lucrative trade with Argentina, and United States' treaty ties through the Organization of American States (OAS). Former British Prime Minister Edward Heath went to Peking, to ask China to try and persuade Argentina to obey the U.N. sanctions. On April 6, 1982, at the direction of President Reagan, Secretary of State Alexander M. Haig Jr. began an effort to find a peaceful solution. After meeting with representatives of Britain and Argentina in Washington, he said that both sides were willing to open discussion. However, highly placed British sources made it clear Britain would accept nothing less than Argentine withdrawal from the Falklands, and government sources revealed that Cabinet ministers were gloomy over the prospects of a political solution. A senior source close to the Prime Minister said, "We are always prepared to talk, but withdrawal is necessary. It is British sovereign territory."\footnote{Reuters, 7 April, 1982.} Argentina had
long claimed the Falklands, which have been a British colony since 1883. British
officials said that the 1,800 islanders, mainly of British stock, were now being held
hostage by Argentina. Rejecting charges from Opposition Labour Party benches, that
demanded her resignation during an emergency session of Parliament, she said, "Now
is the time for strength and resolution." The Labour party itself was divided about
the use of force to recover the island. Left-Wing radical Tony Benn, a strong voice in
the party, called on Labour to dissociate itself from Mrs. Thatcher's "military
adventures." He gave the Prime Minister notice that he intended to ask in Parliament
whether any of the warships bound for the islands were armed with nuclear weapons.

In a dramatic announcement on April 8, 1982, two hours before United States’
Secretary of State could arrive to negotiate peace, defence Secretary Nott said, "Our first
naval action will be intended to deny the Argentine forces on the Falklands the means
to reinforce and resupply from the mainland." Several members of Parliament
expressed their growing concerns during a seven hour special debate on the crisis, based
on new reports which stated that since seizing the islands a week ago, Argentina had
added thousands of men and considerable military hardware, including tanks, armored
personnel carriers and artillery to the original invasion force. Nott told Parliament that
Britain was declaring a maritime exclusion zone covering a 200 mile radius from the

\textsuperscript{78}Ibid.

center of the Falklands from 4:00 Greenwich Mean Time on April 12, 1982, midnight in the Falklands. "Any Argentine warships and any Argentine naval auxiliaries found within this zone," Nott said, "will be treated as hostile and are liable to be attacked by British forces." Government sources said that this action did not require a declaration of war, and Nott emphasized that it would not prevent Britain from taking "whatever additional measures may be needed in exercise of its right of self-defence, under Article 51 of the United Nations Charter." This announcement surprised many members of Parliament who had earlier been focusing on embryonic efforts to find a diplomatic solution.

With the visit of United States' Secretary of State Haig, officials of the Thatcher government said that they were open to a negotiated settlement on the islands' future, if the military government of President Leopoldo Galtieri, withdrew its occupation force in compliance with U.N. Security Council resolution. Haig's talks were viewed as crucial to the settlement of the problem. The most widely discussed option presented by British diplomats was that Argentina be offered sovereignty over the islands while Britain continued to administer under a lease, with the islands 1,800 residents retaining their British identity. This was similar to Britain's lease of the crown colony of Hong Kong from China. Argentina neither supported nor rejected this proposal, but it was strongly opposed by the elected representatives of the Falkland islanders and their lobby. Thatcher and Pym, emphasized during the Parliamentary debate of April 8, 1982, that

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80 Ibid.
any settlement would have to be acceptable to the islands' residents. When asked by Labour's ex-Prime Minister James Callaghan whether the government was seeking to regain British "sovereignty" or only "British administration," Thatcher said, "I regard the Falkland Islands as still British...an invader of unprovoked aggression does not and has not altered the law of British sovereignty."81

A growing number of members of Parliament were now cautioning against the dangers of military conflict while supporting the Thatcher government's policy of at least threatening force. Healey warned the government it had "to tread a narrow path between two dangers," which he said were, "selling the Falkland islanders down the river" in a negotiated settlement and "a large-scale military conflict in circumstances which cost us the support of the United Nations and world opinion....A forced landing," he said later approving the naval quarantine announced by Nott, "would inflict intolerable casualties on the Falkland islanders themselves, whom it is our duty to protect. They are not asking for the peace of a cemetery."82 In his first public statement on the crisis since replacing Lord Carrington, Pym told Parliament,"we shall spare no effort to reach a peaceful solution." But in a well-received speech intended to rally support for the Government, and which was loudly cheered for its tough rhetoric about "unprincipled opportunism of a morally bankrupt regime" in Buenos Aires, Pym emphasized that the threat of military force and international economic sanctions "should show the Argentine

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81Ibid.
82Ibid.
regiment quite clearly that we mean business."\textsuperscript{83} He said all countries friendly to Britain were being asked to "take measures against imports from Argentina, follow us in terminating export credits, encourage their banks to make no more loans to Argentina, and stop the supply of arms and military equipment to Argentina."\textsuperscript{84} He noted that West Germany, France and Belgium have already banned arms shipments to Argentina. This stopped the delivery of aircraft, antiaircraft missiles and spare parts and ammunition from France and four warships and a submarine ordered from West Germany.

Senior diplomats from European Community countries were to meet at Brussels the next day, (April 9), to discuss Britain's formal request for economic sanctions against Argentina. The community had imported $1.8 billion in Argentine goods in 1980. "If the world does not oblige Argentina to restore the Falkland islander's rights," Pym said, "tomorrow it will be someone else's turn to suffer aggression and occupation."\textsuperscript{85}

Later, Nott acknowledged that the Falkland crisis would affect Britain's NATO defence commitments, which increased the burden on the U.S. Navy in the North Atlantic. "While the task force is deployed," he said, "clearly others of our friends will have to fill the gap left by our activities in that area....We have no wish to shed blood, but we shall not acquiesce to any act of unprovoked aggression, undertaken presumably

\textsuperscript{83}Ibid.
\textsuperscript{84}Ibid.
\textsuperscript{85}Ibid.
in the false belief that we lack the courage and the will to respond. Let the world be
under no illusion. The Falkland islands are British and we mean to defend them. We
are earnest and no one should doubt our resolve."86

After consulting with Argentine officials, Mr Haig returned to London where he
met with Prime Minister Thatcher, to discuss a three-point proposal. It called for a
simultaneous pullback of the British Navy and withdrawal of Argentine forces; British
recognition of Argentine sovereignty, and interim administration of the islands by the
United States, Britain and Argentina. After talking to British officials for nearly eleven
hours, Mr. Haig said that the problems remained because Argentina unexpectedly
withdrew an unspecified concession on sovereignty. On April 14, Secretary General of
the United Nations, Javier Perez de Cuellar disclosed that he has set up a United Nations
task force on the Falklands, but would not mediate until Mr. Haig has exhausted his
efforts. This was followed by the Argentinean rejection of the Haig proposal for
provisional three-party administration of the islands, calling sovereignty nonnegotiable.
In Argentina, foreign minister Nicanor Costa Mendez said that his nation’s peace plan
could serve as a basis for an agreement but that there still does not exist any conditions
for an agreement.

According to Argentine news reports, Galtieri offered to remove his troops from
the Falklands if Britain recalled a massive war fleet steaming to the South Atlantic

86Ibid.
archipelago. The fleet was the largest Britain assembled in 26 years and was not due to arrive in the Falklands for at least a week. Argentina in turn agreed to permit self-rule for the 1,800 English-speaking islanders while talks were held to determine the sovereignty of the islands. The dilemma facing Haig was satisfying both Galtieri’s need to preserve some tangible gain from the domestically popular seizure of the Falkland’s and Thatcher’s need to show that Britain, in Pym’s words, "does not appease dictators." 87

Prime Minister Thatcher’s position was again tested on April 14, when Parliament was recalled from its Easter recess to resume debate on the crisis. Mrs. Thatcher and Foreign Secretary Pym reported on the government’s diplomatic efforts and military preparations to force an Argentine withdrawal. Thatcher reiterated that Britain would not shrink from using force if necessary to restore the island colony in the South Atlantic to British administration. She warned Argentina that any challenge to Britain’s blockade of the islands would torpedo efforts to resolve the crisis peacefully. She said Britain was backing its diplomatic efforts with military muscle in imposing a 200 mile maritime exclusion zone around the disputed islands. "If that zone is challenged, we shall take that as the clearest evidence that the search for a peaceful solution has been abandoned," she told a packed House of Commons. "We shall then take the necessary action, let no-one doubt that." 88


Mrs. Thatcher said Britain wanted a peaceful solution but at the same time its Naval Task Force was proceeding with all speed towards the Falklands, seized by Argentina twelve days before. "Our diplomacy is backed by strength and we have the resolve to use that strength if necessary," Mrs. Thatcher said to cheers from the benches of her ruling conservative party. She also paid a warm tribute to Mr. Haig's skill, perseverance and tireless efforts in search of a diplomatic solution and said that his next visit to Buenos Aires, after reporting to President Reagan, would be crucial. She also said "Britain's strategy to achieve a peaceful settlement was based on a combination of diplomatic, military and economic pressures." On April 19, Mr Haig and the Argentines worked on a plan for the joint Argentine-British administration of the islands with Argentines being on a local council. While the Argentineans insisted on a guarantee of eventual sovereignty, the British said that the plan appeared to be unsatisfactory because it did not restore undivided British authority and did not guarantee self-determination by the Falkland Islanders. Consequently, on April 20, Mrs. Thatcher told the Parliament that the proposals were unacceptable.

While some left wing members of the Labour Party questioned the wisdom of sending the Naval Task Force to the Falklands, party chairman Dame Judith Hart said that they should halt the task force and end its "shoot first" policy in the war zone. But, the Labour leader Michael Foot supported the government's stands and warned dissenters

89Ibid., 1147.

90Ibid., 1146.
who put too much faith in the Argentine President General Leopoldo Fortunato Galtieri. He said, "If there was no task force I do not believe there would have been any prospect of negotiating with the Junta in Argentina."91 Foreign Secretary Francis Pym, winding up the five hour debate, said that the Argentine withdrawal from the Falklands was an absolute prerequisite for progress of any kind. "They have absolutely no right whatsoever to be there and they must go."92

By the third week of the conflict reports poured in of 22 marines being captured in South Georgia and seven from the Falklands. The recapture of South Georgia Island so soon after the arrival of the vanguard of the British Naval Task Force in the South Atlantic demonstrated how swiftly Mrs. Thatcher was ready to use force. Mrs. Thatcher explained the situation by saying, "The Operation was conducted in exercise of our right of self-defence under Article 51 of the United Nations charter. The minimum force was used, consistent with achieving our objective, and no lives-Argentine or British-were lost in the operation."93 Since then she has warned of her intention to move just as expeditiously against the Argentine occupation forces on the Falklands, despite evident concern in her Cabinet and Parliament about such rapid escalation. "I do stand very, very firmly for certain things," Thatcher said in a BBC television interview, "and I am here [as Prime Minister] because I do." "I'm standing up for the right of self-

91Ibid., 1150.

92Ibid., 1153.

determination "for the Falklands' 1,800 staunchly British inhabitants, she said, "I'm standing up for the territory. I'm standing up for our people. I'm standing up for international law." She then compared the Argentine invasion of the Falklands to an airplane hijacking. "Without a tough policy, she said, hijackers increase. Off again. That's the way to stop hijacking." Similarly" she said, "to see that an invader does not succeed is to stop further invasions and to really stand up for international law against international anarchy."95

The British people appeared to agree. A poll conducted that week by the respected Markets Opinion Research International opinion firm, indicated that Mrs. Thatcher's Conservatives had pulled well out in front of the Opposition Labour Party and the Social-Democratic-Liberal alliance, with 2 out of 5 respondents saying that they would vote for the Conservatives if an election were held that day. The Prime Minister's personal approval rating, which had dipped badly due to Britain's prolonged economic woes, had begun rising since the crisis began. She indicated that she was ready to do only three things to help Argentine President Galtieri "save face." She would pull back the British Task Force after Argentina had completely withdrawn its forces from the Falklands. She would allow a U.S. or international peace-keeping force to supervise the withdrawal while British officials resumed civil administration of the islands. And she suggested that the Argentine flag could fly over some form of diplomatic mission there.


95Ibid.
However, Mrs. Thatcher and her aides appeared to be unruffled by the erosion of opposition Labour Party support for her strategy. On April 29, she rejected Opposition calls for United Nations mediation and said that the responsibility for war or peace over the Falkland Islands rested with Argentina.

On April 28, after the Organization of American States failed to adopt economic sanctions against Britain, Argentina said that the latest American peace plan was under study. Under the plan, Argentine troops would leave the islands, military threats from Britain would end and there would be a brief administration by Britain, followed by negotiations. April 30, saw the United States admitting that the Haig mission had failed to produce a solution and announced economic, diplomatic and logistic support for Britain. It is then that the Secretary General of the United Nations met with Argentine Foreign Minister Costa Mendez in New York and gave him a framework for a solution, and later on May 2, the Secretary General showed Mr. Pym the proposal. Peru offered a simplified version of the Haig plan by proposing a cease-fire, a phased withdrawal of Argentine and British forces, an interim administration of the islands and negotiations on sovereignty.

As British warships bore down on the Falklands, poised for a war that both sides saw as imminent, Prime Minister Thatcher issued another stern warning to Argentina to withdraw its troops from the Falklands before it was too late. Speaking during the fourth emergency session of the House of Commons she said, "It was the Argentine invasion
that started this crisis and it is Argentine withdrawal and restoration of British administration that must put an end to it. The key to peace is in the hands of the Argentine government and the responsibility is theirs,"96 Mrs. Thatcher said.

She then announced, "The latest of our military measures is the imposition of the total exclusion zone round the Falklands Islands of which we gave 48 hours notice yesterday. The new zone has the same geographical boundaries....It will apply from noon London time tomorrow to all ships and aircraft, whether military or civil, operating in support of the illegal occupation of the Falkland Islands. A complete blockade which will be placed on all traffic supporting the occupation forces of Argentina....We shall enforce the total exclusion as completely as we have done the maritime exclusion zone. The Argentine occupying forces will then be totally isolated-cut off by sea and air."97 The Opposition Labour Party demanded Britain seek United Nations mediation before resorting to force. "The paramount interest of our country and of many throughout the world is to have a peaceful solution," said Labour Party leader Michael Foot. "We must try and try and try again. Every possible option must be examined in case it offers a possibility of a peaceful settlement."98 But Mrs. Thatcher rejected the idea, saying Britain already had "the most powerful mediator we could have" in Secretary of State

97Ibid., 982.
98Ibid., 986.
The early days of May saw Argentina rejecting Peru's plan for settlement, because it did not guarantee eventual Argentine sovereignty. However, Argentina was open to peace talks, if it was arranged by the United Nations. Even though the Americans responded positively to the Secretary General, the American-Peru plans failed and Mr. Pym blamed "Argentine intransigence." On May 8, the Secretary General began indirect negotiations, meeting separately with Sir Anthony Parsons, head of the British mission to the U.N., and Enrique Ros, Argentina's Deputy Foreign Minister. In what could be considered to be the first conciliatory move, since the initiation of the negotiation process, on May 11, Argentina indicated that it would no longer insist that its sovereignty be recognized as the inevitable outcome. May 14, after six consecutive days of talks with the Secretary General, the talks were temporarily interrupted when Sir Antony was called to London for consultation. The talks then resumed on May 17, upon his return.

As time passed and war became more and more inevitable, Mrs. Thatcher was increasingly being pressured to consult with Opposition leaders. Sources close to her revealed that despite the persuasion, she had no intention of doing so before deciding the Task Force's next move. The Conservative Party was still united behind her, but a spilt emerged in Parliament unity, late April, when Opposition Labour members of the House

99Ibid., 987.
of Commons shouted "warmonger" as Mrs. Thatcher rejected the demand of their leader that she should take the dispute back to the United Nations. On April 28, situations worsened when the Labour Party's national executive board widened the rift with a unanimous resolution calling on the government to respond immediately and favorably to the U.N. appeal to Britain and Argentina, not to take fresh action that would escalate conflict. The resolution also pressed the government to begin immediate discussions with the U.N. Secretary General Perez de Cuellar, to see how his proposals could best be carried out. Labour's deputy leader, Denis Healey, who was just back from talks in New York with Perez de Cuellar, said that if Mrs. Thatcher abandoned the search for a diplomatic settlement "she will lose not only support in the Commons but support in Britain as well." Britain insisted on self-determination for the 1,800 islanders who were considered to be overwhelmingly pro-British. Mrs. Thatcher however, did not reject the proposals outright and suggested there was still time to avert a war if the Argentineans responded. "All I can say is that the proposals are complex and difficult and, inevitably, they have all the hallmarks of compromise in both their substance and their language," she said. But British officials said Mrs. Thatcher told a meeting of her Cabinet before the parliamentary debate that she was running out of patience and would not leave the storm-battered British fleet inactive in the South Atlantic much longer. They said Britain, like Argentina, increasingly has come to believe that war was inevitable.

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100 Ibid., 1058.

101 Ibid., 985.
"Argentina in a similar signal on April 30, warned Britain that any British ship or plane within 200 miles of the Falklands would be regarded as hostile and dealt with "accordingly". The announcement came half a day before the April 30, scheduled start of British sea and air blockade of the same area." 102 On May 2, 1982, Parliament was informed of the sinking of the Argentine cruiser General Belgrano during the fighting, because it posed a threat to the South Atlantic Task Force even though it was outside Britain's 200-mile security zone around the Falklands. On May 20, the Prime Minster was prepared to declare that negotiations had failed and that Britain was taking military action to retake the Islands. Secretary General, Perez de Cuellar said on May 19, that he had appealed to both Thatcher and Galteiri to consider his own last minute proposals to bridge their differences. While informing the Security Council in a closed consultation he admitted that Argentine President Galtieri had responded positively but Mrs. Thatcher had been "ambiguous". He said, however, the fact that she had not rejected his effort, convinced him to pursue this last chance. While he insisted in a latter statement to the press that an agreement still could be reached "without prejudice to the rights, claims or positions of either party," the Secretary General acknowledged, "we are at a very dangerous point" where "the time left for negotiation must be measured in hours." 103 The negotiations had reached an impasse earlier in the day when the British ambassador,

102The New York Times, 30 April, 1982, Section B; Page 1, Column 1.

Sir Anthony Parsons, reported to the Secretary General that the Argentine reply to proposals made by London, were unacceptable. The Security Council then granted Perez de Cuellar’s request of two more days to pursue his own peace plans, but Parsons said that he was "very pessimistic" that agreement could be reached.

Many politicians and diplomats expected Mrs. Thatcher to announce that British forces have begun landing on the Islands, although some government sources cautioned that "this would not necessarily follow immediately after a breakdown."104 Defence Secretary John Nott indicated that only the timing of an invasion remained to be decided. He suggested that more raids might be made on key outlying military targets before an attempted recapture of Stanley. To give the Argentine forces a better understanding of military developments "than is currently available through widely inaccurate Argentine reports,"105 the British Defence Ministry announced that it would start to broadcast in Spanish over the radio on Ascension island, in the hope of convincing them to surrender without a fight.

The reported precision of the weekend’s of May 12-13, raid on the Pebble Island airstrip made it appear certain that specially trained British commandos had landed secretly on the Falklands some time ago and had been radioing to the Task Force information about locations of Argentine troops and likely landing sites. British officials

104Ibid.

105Ibid.
said that they would continue after a landing to seek a negotiated settlement with Argentina on the Falklands' long term future. But Foreign Secretary Pym, told a closed meeting of Conservative members that "all bets would be off" concerning British terms in negotiations if the islands were recaptured. Both sides confirmed that a major difference between them, was the British demand that the Falkland islanders' legislative council continue to function during the interim United Nations administration of the islands. Argentina opposed such a formal role on the ground that it would weigh the concurrent resolutions on ultimate sovereignty in Britain's favor. Another sticking point was the British insistence on holding onto South Georgia and the Sandwich Islands while the talks went on, while Argentina insisted that they too be put under United Nations administration and that the British troops thereby should be withdrawn. Perez de Cuellar expressed his concerns. He said, "The cost of failure in terms of human life and suffering is too high to permit us to give up our own efforts." It thus became obvious that his input into this negotiating process had been minimal. Britain thus withdrew its proposals made at the United Nations to avert war and blamed Argentina for the collapse of peace talks. "These proposals of ours are no longer on the table," Prime Minister Thatcher told Parliament. "They are withdrawn. They have been rejected by Argentina. It seems perfectly sensible, therefore, to withdraw them." In an emergency House of Commons debate, she said the government received new last-ditch "formulations and suggestions" from the United Nations Secretary General, but has

106Ibid.

told him they stand no chance because they include proposals already rejected by Argentina. "Even if they were acceptable to Argentina, it would take days and weeks to negotiate them," she said. "We have been through all this before. Argentina has rejected our proposals and it is inconceivable she would accept those of the Secretary General which closely resemble ours."\textsuperscript{108}

Jorge Herrera Vegas, Argentina's United Nations delegate said on ABC's "Good Morning America" show that if Argentina would make any more concessions, it would be the equivalent of going back fully to the status quo before the April 2 invasion of the islands by Argentina and this would restore the colonial British administration on the island. In his opinion they could not have been more flexible. Neither nation responded to the last appeal put forward by the United Nations Secretary General. Mrs. Thatcher met with her War Cabinet before a debate in the House of Commons. Her government was "resigned to the belief that only full-scale action can resolve the Falkland's crisis," the London Times said. During Parliament's sixth emergency debate on the Falklands, Prime Minister Thatcher faced minimal opposition except from the far left. Radical Labour Party M.P. Tony Benn declared that a tragedy was unfolding, the magnitude of which no speeches had reflected so far. He accused the Prime Minister of promoting "war hysteria." Labour Party leader Michael Foot continued to call for additional diplomatic negotiations in the dispute, but he asked his party to abstain in a Commons vote, pushed by the left, which was designed to reflect approval or disapproval for the

\textsuperscript{108}Ibid., 479.
government's policy. The final tally: 296 for Thatcher, 33 against her, the remainder abstaining or absent. Mrs. Thatcher had overwhelming levels of public support. One British national public opinion poll showed 83% in favor of regaining the Falklands. Given the choice between force and diplomatic pressure to achieve that goal, 53% preferred the use of force.

A military showdown between the British Forces and the Argentine troops seemed inevitable after Mrs. Thatcher had earlier described Argentina’s latest negotiating position as not very encouraging. Political sources said they believed Mrs. Thatcher and her War Cabinet were close to signalling the battle fleet to go ahead with a landing to recapture the Falklands. Finally a weary Perez de Cuellar formally announced that the peace talks had ended. Just ten hours later, the British invaded the Falklands.

The heightened clash of arms in the South Atlantic posed grave risks, not only for the two combatants but also for the United States and Western Europe. By backing Britain, the Reagan administration seriously risked estranging Argentina, a nation that it was counting on to help in the fight against Communism in the Western Hemisphere. What was more, by siding against Argentina, the United States stirred old resentments in Latin America about the reliability of the United States as a hemispheric partner. There were also signs of strain in the European Community last week as members reluctantly extended for a single week their month-old trade and economic sanctions against Argentina. The renewed fighting also gave the Soviet Union, which had become
increasingly pro-Argentine, a chance to try to win more friends in South America.

The detonator for the Falklands powderkeg was not the territory involved - a scattering of rocky, windswept outcroppings in mid-ocean - but the principles that the dispute evoked for each nation. For the military regime of Argentine President Galtieri, the issue was sovereignty over the Falklands, which Argentina claimed had been stolen by the British nearly 150 years ago. The British claim to sovereignty was based principally on the fact that its citizens had occupied the islands continuously for the past 150 years. Argentina called the occupation illegal and claimed it inherited succession rights from Spain. For the Argentines, the war had an important psychological dimension. One reason for the Argentine military's confidence was the feeling in Buenos Aires that the British did not take the country seriously as a military power. For the nationalistic Argentines, nothing could be more insulting. For the Conservative Government of British Prime Minister Thatcher, which had all the moral force of international law on its side, the even more fundamental question was one of defence against aggression. In addition, Thatcher was intent on protecting the democratic right of self-determination for the 1,800 English-speaking island residents who are virtually unanimous in wishing to retain their ties to Britain.

Back in London, Mrs. Thatcher's five-member War Cabinet had reshaped its Falkland invasion strategy. Earlier, the Cabinet had settled on a cautious step by step approach. Then suddenly the emphasis was on speed. Senior British Government
officials had four reasons for this change. Firstly, "the need to accomplish the invasion before the U.N. Security Council could consider a cease-fire resolution of the conflict"; secondly, "continued deterioration of the hazardous South Atlantic weather"; Thirdly, "information that Argentina was receiving additional military equipment, notably surveillance aircraft with submarine-detection gear and air-to-surface missiles from Brazil, and possibly from other sources, more of the deadly Exocet missiles that devastated the Sheffield"; and Fourthly, "strong advice in private from both the U.S. and France to act quickly and decisively in the combat. In addition Britain had been considerably cheered by the success of the lightning May 15 raid by 50 commandos on nearby Pebble Island; London claimed the destruction of eleven Argentine aircraft at the cost of only two minor British casualties."109 In the revised plan more emphasis was placed on attrition, when they launched a series of quick attacks based on hit-and-run tactics. The British superiority in armed forces, ships and aircrafts outshone that of the Argentineans, and helped them claim a quick, short victory, exactly as they had planned. "Had the Argentine air force been equipped with more up-to-date systems," noted one general, "the war would have been a much more bloody affair."110

Any hope of winning a long battle in the Falklands depended in part of Argentina's ability to maintain stocks of spare parts and sophisticated weaponry,

109Ibid.

particularly for its air forces. There were unconfirmed reports that the country was scrambling in the international arms market for additions to its arsenal. Argentina was most eager to obtain French-built Exocets, the kind of highly accurate missiles that had devastated the Sheffield. One country that showed signs of giving Argentina some arms help was Israel. Jerusalem’s Foreign Minister told British diplomats that Israel would honor existing contracts with Argentina. Israeli arms such as the Gabriel surface-to-surface missiles and spare parts for the Israeli-modified Mirage jet, the Nesher were being transported into Argentina through unofficial channels. Some of Argentina’s Latin American neighbors, notably Peru and Venezuela, had also promised military aid to Buenos Aires if the Argentines requested it. Less tangible was the help that Moscow was suspected of providing the junta. It was thought that the Soviets could be giving the Argentineans information concerning British fleet movements by means of a nuclear-powered satellite launched May 15.

The Argentine Air Force remained the single most daunting threat to the British ships. The Argentine acquisition of 33 Mirage and Dagger jets and 59 Skyhawk Harriers, was remarkable in contrast to the defensive abilities of the British Harriers, which were very slow. The second hazard to the task force was Argentina’s submarine fleet. Two of the country’s three submarines were modern, West German-built vessels which were quiet and virtually undetectable. The subs were equipped with "smart" torpedoes, electronically guided to their targets, which were at least as deadly as the ones that the British used with devastating effect on the cruiser General Belgrano.
The United States’ contribution to the British was commendable. Apart from the intelligence data that Washington had been routinely providing London for several weeks, it had agreed to assign several KC-135 aerial tankers to the British NATO duty, thereby freeing Her Majesty’s tankers for war service. The United States also helped by quietly stockpiling fuel and other supplies for Britain at the United States airbase on Ascension Island, some 3,800 miles from Falklands, which the British were also using as their nearest safe port in the struggle. The U.S. promised to provide anything that the British asked for, including fuel, ammunition, defence missiles, communications gear and radar, but under no circumstances would it send in troops.

Support for the government appeared to remain buoyant: a poll conducted before the invasion showed that approval of Thatcher’s Conservatives had risen ten points, to 48 %, since the last sampling. The war however was a short one. The conflict extended over a period of 73-days. It started on April 2, 1982 with the Argentine invasion and successful take over of the Falkland Islands, and ended on June 14, 1982, with the Argentine troops surrendering to the British forces. In the twenty-four days of hostilities the Argentine army suffered. But the cost to Britain was high: 225 killed, 777 wounded and an estimated $1.4 billion worth of ships and equipment were lost in combat.

The sinking of the Belgrano, when it was well outside the 200 mile radius, was seen by many as a step taken to abort a peaceful solution to the conflict. It also created a precedent for other countries to ignore war zones, which could threaten the lives of
British seamen. Many others have criticized Mrs Thatcher's intentions saying that, she had begun the war for her own political purposes at a time when the Government was extremely unpopular. Lord Franks, 77, an Oxford academic and former British Ambassador to Washington headed a six man bipartisan panel which was entrusted with the responsibility of investigating into Opposition claims that the Thatcher government was aware of Argentinean movements prior to the invasion on April 2, 1982. "Our account demonstrates conclusively that the government had no reason to believe before March 31 that an invasion of the Falkland Islands would take place at the beginning of April."\footnote{Ibid., 36.} The Franks Report completely absolved the Thatcher government of virtually all blame for failing to forecast the Argentine invasion. Contrary to the Franks Report, The Times and the Daily Telegraph quoting "intelligence" and "impeachable" sources said evidence of Argentina's top secret invasion plans, including U.S. satellite photographs, were relayed to London 10 days before the military take over.

Another main advantage that the U.K. had over the Argentine troops was the Satellite reconnaissance, which provided the British with an undisputable advantage. The British intercepted all the military radio transmissions and private international telephone transmissions of the Argentine forces, and almost certainly broke all their codes. Five British nuclear powered submarines took part in the war: Spartan, Splendid, Valiant, Courageous and Conqueror. The last was responsible for sinking the Argentine cruiser Belgrano with the loss of 368 lives.
The attack on the Belgrano remains controversial in the United Kingdoms but in Argentina it is clearly recognized that the use of nuclear propulsion conferred a military advantage that the British enjoyed over the Argentineans. This action came in direct violation to the "Treaty of Tlatelolco" which is a Treaty for the Prohibition of Nuclear Weapons in Latin America. Great Britain was a signatory of this treaty. Therefore three possible violations can be cited: the use of nuclear powered submarines; the presence of nuclear weapons in the British Naval Task Force; and the stationing of a nuclear armed submarine within range of Argentina.

As anticipated the British victory over Argentina, proved to be one of the biggest assets of Prime Minister Thatcher who then used the "Falkland factor" and her popularity to dissolve Parliament and call for fresh elections. In the general elections of May 1979, Margaret Thatcher had led the Conservatives to a 44 seat majority. In 1983, during her second electoral victory she won by a majority of 144 seats and during her third electoral victory in 1987, she won by a majority of 101 seats. The "Iron Lady" had stood her ground and emerged stronger than ever. But unfortunately, even today, nagging uncertainties about the war remains. Was it preventable? Had Prime Minister Margaret Thatcher failed to anticipate the Argentine threat? Did the Foreign office foul up? Was the intelligence service at fault? Those questions and others like them have haunted British politics since the war.
CHAPTER 5 CONCLUSION

The purpose of this effort was to evaluate the war powers of the United States President and the British Prime Minister. The reasons for having chosen the Persian Gulf war and the Falkland war were several. Although somewhat similar they are not identical. They significantly differ in the attitudes of the people who supported their leaders, the type of wars fought, the intentions with which the wars were engaged into, and the repercussions and the outcome of the wars.

The Parliamentary setup of the British system of government differs greatly with the Presidential or Federal setup of the United States government. If we briefly analyze the differences in their structures, we will gain valuable insight into the potentials, capabilities and difficulties that these governments encounter, while exercising several of their powers, more specifically the war powers. Over the years power has gradually gravitated into the hands of the heads of all governments. The main contribuent to this factor has been the evolution of the nuclear age, one in which decisions have to be made very quickly and therefore there is hardly any scope for long and time consuming deliberative processes. The importance has thus been focussed on the best possible manner in which this gravitation of power into the hands of one person or a small group of persons needs to be effectively checked and stopped. The leaders, who are gradually becoming dictatorial in nature, need to be made more accountable to the people they represent.
The American Presidents' role in world politics has grown at an impressive level. With modern day changes in world politics, not only the United States but also the rest of the world, looks up to the Office of the President for direction and guidance. It is the task of every incumbent President to perform his duties responsibly. The concern of the people should be their priority, thus adhering to the true principles of democracy. The war powers of the United States President which are vested in Article II of the constitution have not been clearly defined, thereby creating loopholes that can be taken advantage of.

The system of checks and balances, the hallmark of American democracy, has been worn down, and it does not act as an effective check on any three branches of the government - the executive, legislature and the judiciary. For example, the Concurrent Resolution provides Congress with the power to compel the President to terminate the engagement of United States forces immediately, when the military deployment has not been previously approved. However, this clause has often been seen to be unconstitutional thus reinforcing the claim that the resolution has become nothing more than a 'dead letter'. President Bush, despite having ample time for consultations with Congress and full and complete compliance with the terms of the Resolution, did neither. On November 19, 1990, 54 members of Congress joined together in filing a law suit against the President in a federal district court to compel him to comply with the resolution, and enjoin him for not having sort Congressional support or a declaration of war or other explicit congressional authorization. The court employed a tool of judicial
abstention to avoid deciding the case. The judiciary whose role is to question, examine and accordingly pose a check on the actions of the President, failed to do its job. The court might well reason that legal rules are not suitable for dealing with such key foreign policy. The President continued to ignore the Resolution as well as Congress’s insistence that he comply with its terms. It was only in January of the next year, on being pressured by a few of his well-wishers that he sought Congressional support to start the war.

Although the authority to make war power was vested in both the Congress and President, Chapter 1 has helped us evaluate that this decision can seldom be considered to be a joint decision. With the use of his emergency powers the President can create a situation where the Congress has to declare war. As mentioned before the development of nuclear weapons have contributed to this phenomena, where a crisis situation can occur overnight and decisions are to made in the shortest possible time. Thus sometimes the President who can speak in one voice, may go ahead and commit the forces and then later inform the Congress. Deliberation in the Congress takes several months, it is not always possible to wait for that long a time. Thus the purpose with which the framers of the constitution had constituted this power to a concurrent authority, has not been served.

The constitution, however, does empower the President to take action and repel sudden attacks, at a time when Congress is not in session. Most of the decisions that
created a groundwork for the Persian Gulf Crisis were made by the President on the advice of his advisers, at a time when Congress was in recess. Even after repeated suggestions, he hesitated to convene Congress for an emergency session, till the first week of January, a week and a half away from the start of war.

We have also assessed how congressional powers that are to act as a check on the President, in the effort to curtail his war making authority, have failed. The congressional power of oversight not only helps to expose the President but may also end up exposing the divisions within Congress. The President can then utilize this to his advantage proving that Congress has no unity and is unstable, and therefore can not be relied upon, leaving the people with only one alternative, and that is opining with him. The powers of budget control can hardly do anything effective in respect to the present years expenditures. However, if the crisis situation were to continue for a longer period of time, the President would then be forced to consider Congress’ decisions.

One of the most important findings of the case studies was the duration of the war and this in turn would decide the consequences. If the war was a short and quick one, it was easier for the President of be supported both by the Congress and the people as was the case of the Gulf war or the Panama invasion. Quite contrary to this situation is the case of the Vietnam war, where because the war dragged on to a great length of time the President lost support of the people and Congress and even had to encounter hostile world opinion. Thus the longer the war continued there was a greater chance of
congressional influence. Executive privilege has also been used by Presidents as a tool which helps them to protect themselves not only from the questions of the media but also from the Congressional power of oversight. Impeachment is not one of the most effective checks the powers of the President. It is a time consuming process whose consequences are not healthy for the people and the nation.

Over the years, presidential decision making has become very secretive. The President is observed to act in consultation with his advisers. These advisers are not popularly elected by the people and are therefore not accountable to them. There is always the fear that the may decide on things that may be contrary to the interest of the people. Their political life depends on the popularity they have with the President, thus keeping the President happy, most often, is their priority.

Several attempts have been made over the years to create a War Powers Resolution that can effectively make the President accountable to the people. Chapter 1 and 3 have studied the loopholes of the latest resolution and also how President Bush took full advantage of these discrepancies. Sixty days to recall troops, if Congress has not approved of the deployment, is too long a period of time. Modern warfare with its technological advances can be started and terminated well before that period of time. The hands of Congress are also tied in the event of the United States’ involvement in a situation where it is part of an international coalition. There are no provisions for such an occurrence in the constitution. President Bush therefore effectively popularized the
The British system of Parliamentary government greatly differs from the American set up. The House of Commons, the House of Lords and the Monarch constitute the Parliament. It has an Unitary set up, very different to that of the federal set up in America. Power flows from the center, and accountability is to the center, of which the Prime Minister is the head. In the United States the President does not have any hold over the legislature. It is often observed that the President might be of a different party than the one in majority in the Congress. The Prime Minister, in Britain, has a good hold over the legislature, which he heads, and thus has a direct influence on the laws that are being made. The attitude to party system is total in England as opposed to a decentralization of the party system in the United States.

The British believe that a complete separation of powers between the executive, legislature and judiciary would lead to a deadlock or even to open conflict. Therefore some connection between the three departments are retained. The role of the British Prime Minister varies greatly with that of the United States President. Public opinion plays a major part in the Parliamentary system in Britain. Ministerial responsibility and the vote of no-confidence is the manner in which the Parliament keeps the ministers accountable to those who elected them. The party in power has to always maintain a majority in the House of Commons for, if they fail to do so, a vote of no-confidence will be passed. The house will be dissolved and new elections will have to be announced.
This motion of no-confidence has contributed in making the British leaders responsible and accountable to the people. However, this opportunity to dissolve the House has been used by several Prime Ministers to lengthen their term in Office. When the popularity of a Prime Minister is very high, due to a recent victory, or the successful passing of a resolution etc., Prime Ministers have often been observed to take advantage of the situation. They can request the monarch to dissolve the parliament much before the term ends and call for fresh elections. Margaret Thatcher did so after Britain’s victory in the Falkland crisis. She dissolved Parliament and called for fresh elections in 1982. She was re-elected for a new term as the Prime Minster from 1983-1987.

The principles of collective responsibility, help in holding together all ministers in the party. Ministers are collectively responsible to each other - they sink and swim together. They resign together if defeated on a major issue in the House. They even speak together, presenting the image of a unified whole. If any minister has an opinion of dissent to express, he should do so after resigning from Parliament. In this manner the Prime Minster can keep a delicate control over the ministers in his Cabinet and party.

The functioning of the British Parliament has become secretive as has the decision making of the United States President. Like the parallel of presidential advisers in the United States, in Britain, during a war the Cabinet is super seeded by the War Cabinet which is composed of people close to the leader. Most of the times during decision making the influence of these small group of people on the Prime Minister is more
effective than the concerns of the people. So most of the times Parliament or the Cabinet is not likely to be informed of the decisions being made.

The Opposition party also has a very active role to play. It has the responsibility to keep the majority party constantly on its toes. Not only is it always waiting in the wings - ready to replace the government, when it loses majority - but it also has the enormous responsibility of constantly questioning the decisions of the ruling party, to reveal both the flaws in their decisions and also educate the British public. Decisions arrived at in Parliament during normal sessions or during emergencies have always provided the Opposition the opportunity to question the stand taken by the ruling party. Every minister can be questioned on topics pertaining to his department. Therefore in this manner vital information, which constitute the basis of the policies are revealed for public scrutiny.

One of the main priorities for the British Prime Minister is to primarily secure and develop the popularity and support from other members not only in the Cabinet but also in the party. Prime Ministers can act dictatorially or unilaterally only if they have the support of their colleagues. Over the years the growth of the office of the Prime Minister has led some to call it the "presidentialization of the Prime Ministers Office." No matter how true this may be, most importantly this is dependent on the popularity that the occupant of this position enjoys. Thus the threat of being removed from office is more real to a Prime Minster or any other minister in Britain than it is in the United States.
The personality or the charisma of the Prime Minister plays a vital role in determining his popularity. Much tends to be overlooked or accepted both by his fellow ministers and by the citizens at large, only if the Prime Minster is of a dynamic disposition. He has to be a vote catcher whose fortunes and popularity will positively effect the fortunes of his party. Elections today, have become more of a plebiscite, where citizens vote for a person and not a party. Thus the fortunes of the Prime Minster is closely tied to that of the party he heads.

The Persian Gulf crisis is remarkably different than the Falkland crisis. First and foremost reason is that the Falkland Islands were considered to be an integral part of the British territory. Contrary to that opinion the Americans never felt the same for Kuwait. Senator Cohen had said in reference to the Persian Gulf war, "Right now, the American people are not persuaded that Kuwait is in fact our home, or Saudi Arabia’s our home, but rather the equivalent of the boardinghouse...Why are we willing to die for the Kuwaitis at this moment." However the threat that the Iraqi invasion was posing on Kuwait and the world’s oil reserves made the situation troublesome and frighteningly realistic. The British had spontaneously supported the war because they felt that a vital part of their territory was being taken away from them. However, the prosperous fishing trade might have also worked as an added incentive. Another reason for the enormous support that the British might have received is because this war was one far away from home and the chances of the Royal British Navy being defeated at the hands of the

Argentineans was unrealistic or impossible. The British were much more advanced in their weaponry and military capability in comparison to the enemy whose military and Navy was neither world renowned or as developed. Thus family members could worry less as regards to sending their husbands, sons or grandchildren to the war, because they had the confidence that the possibility to them returning are more higher than in any other war England has engaged herself into. In America however, although the war was far away from home, there was no telling what the soldiers would encounter once they arrived. Saddam Hussein’s threat to use chemical weapons was threatening, the venue of the warfare [desert] was something the Americans and the Allied powers were not accustomed to, and no one really knew the extent of Saddam’s nuclear capability. Thus sending a family member was not that easy to an American family as it was to their British counterpart in England. Another factor that differs is the time and age that these two wars were fought. The war in the eighty’s was much less sophisticated, and less complex as the war fought in the ninety’s. One of the main reasons the United States were victorious and the war lasted such a short period of time was because of the advantage of technological advancement of the United States and Allied forces. Their superiority in air technology had proved to the greatest advantage. However a large deployment of ground forces also posed to be an effective threat to the enemy.

On of the main conclusions that I have arrived at after conducting this study is that a significant amount of the repercussions of such an involvement depends on the length of it. How long will it take? How many casualties will there be? How many
bodybags will return? These are the questions that haunt the minds of the people who send their loved ones into such a situation. Depending on the answer they get to their questions they can be categorized as strong supporters or avid opposers to the policy of engagement. The shorter and quicker the victory is the more support it is likely to get and less congressional influence. But as the war drags on gradually over a period of several months support starts to dwindle and Congress starts to scrutinize the involvement. The American people had all along supported negotiations and consultations rather than direct confrontation in the event of the Persian Gulf crisis. The President and a few of his advisers were determined to engage in a war, believing that this method was the only manner in which Iraq could be evicted and the sovereignty of Kuwait be restored. The people fresh from their memories of the Vietnam war were not quite certain of this war. Peace and not war is what they demanded. This consequently resulted in the President's popularity dipping significantly. "A poll published in 'USA Today' headlined "Bush Support Slim," said that 51% approved of Bush's handling of the crisis, down from the 82% approval three months before."\textsuperscript{113} However, on the advice of James Baker when the President did consider the alternative to talk with the foreign minister of Iraq, the hopes of the people soared. "The Washington Post published a poll showing that 90% of Americans approved of the Baker-to-Baghdad offer."\textsuperscript{114} These statistics give us a clear idea of the preferences of the people.

\textsuperscript{113}Ibid., 325.

\textsuperscript{114}Ibid., 337.
A common criticism of President Bush during the Gulf crisis was that the inner circle of Bush, Baker, Cheney, Scowcroft and Powell was perhaps a little too close knit. Their meetings, given the frequency and privacy, ought to have been the forum for discussing and debating alternatives and fundamentals. It was also perceived by many that the reason they insisted on quickening the occurrence of the war is because the threat of the break up of the international coalition which was from the beginning very delicate. However, as a final analysis I would like to add that before engaging in a battle with an enemy it is of most vital importance to understand and study his mentality. George Bush, his advisers and many others were of the opinion that after observing the strong military build of the United States and its allies, Saddam Hussein will withdraw automatically, without any confrontation. But unfortunately President Bush apparently had read Saddam wrong. The war was not only based on the principle of morality and aggression but also cultural misunderstandings.

This thesis has thus attempted to compare not only the war powers of the United States President and the British Prime Minster, but also the manner in which they have used their war powers during an emergency situation. In conclusion, I would like to say, that the main responsibility of all leaders of nations is to conduct themselves according to the needs of the people who have elected them. They should learn to respect the trust placed in them. No matter how powerful they might become, they should always be accountable to the people. Failure to do so will only result in the termination of their political career.
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