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RETHINKING THE ROLE OF THE WAR POWERS RESOLUTION: CONGRESS AND THE PERSIAN GULF WAR

Eileen Burgin*

The Iraqi invasion of Kuwait (1990-1991) prompted the most rapid and massive deployment of United States military power, as well as the largest war involving U.S. troops, since passage of the War Powers Resolution (WPR) in 1973. The troop activity in the Persian Gulf also represented exactly the sort of situation in which the WPR sponsors intended the law to apply.1 According to the law’s intent, Congress would be in on decisions from before the takeoff and through the landing; this codetermination would occur through such means as consultation, presidential reporting, and the triggering of the sixty-day clock.

Yet the WPR clearly failed to meet its objectives during the Gulf crisis, many scholars and observers contended; even more important, these critics resoundingly pronounced the law a “dead letter,” irrelevant and useless.2 For instance, legal scholar Michael Glennon claimed the Persian Gulf events highlighted the “fecklessness” of the WPR;3 political scientist John Rourke labeled the WPR a “largely empty vessel;”4 commentator Ted Koppell on Nightline asked Senator Robert Kerrey if the measure was simply an “archaic joke;”5 and former Secretary of the Navy John Lehman wrote, “Desert Storm drove the final nail” into the law.6 Some members of Congress echoed these assessments: Representative Peter DeFazio argued in October 1990, for example, that “the final and complete unraveling” of the WPR was occurring.7

Certainly, much agreement exists on the WPR’s failure to achieve its sponsors’ goals in the Gulf crisis.8 An examination of presidential and congressional actions

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2. The “dead letter” analogy is common: see Holt, supra note 1; and Will Marshall, Going to War Should Be a Shared Decision, Newsday, Dec. 12, 1990, at 125.
from August 1990 through January 1991 illuminates the fact that the WPR did not function as its authors intended. That failure, however, does not necessarily reduce the law to an academic curiosity, with no real influence upon congressional or presidential action. In this paper I show, contrary to conventional wisdom, that the WPR affected Congress in the Persian Gulf crisis—the WPR affected Congress in many subtle and indirect ways. Thus, the WPR’s impact is far less direct than the law’s sponsors intended under some of the mechanistic procedures they created, but the impact remains real, especially in the eyes of congressional participants.

Before delving in to this matter, it is necessary to set the stage by very briefly reviewing both the WPR’s various provisions, and the key, relevant events from August 1990 through January 1991 from a congressional and WPR perspective. I then examine the Bush administration’s compliance record with the law, as well as the congressional response to the administration’s interpretation of the law and its WPR obligations. In the next section I explore and explain how, despite appearances to the contrary, the WPR nonetheless affected congressional action according to the participants themselves. The discussion here draws on data and information gathered from interviews with congressional staff people, members of Congress, and senior Bush administration officials. The final section considers these conflicting views of the WPR to offer a more balanced assessment of the law.

I. PROVISIONS OF THE WPR

The major purpose of the WPR is to “insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces . . . .” To this end, the law includes three principal procedures: presidential consultation with Congress, executive reports to Congress, and congressional action regarding military ventures. In this section I discuss these procedures as well as a WPR provision relating to the interpretation of the law.

A. Consultation

Section 3 of the WPR addresses consultation. The law stipulates that “the President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances . . . .” Consultation is to continue while troops remain engaged.

The 1973 House report accompanying the WPR sought to clarify some of the textual ambiguities in these consultation requirements. Most importantly, in terms of the definition of “consultation,” the report stressed that consultation “means that a decision is pending” and that members “are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated.” Thus, informational briefings in which a fait accompli is presented and the
counsel of legislators is not solicited fail to fulfill the law's consultation obligations. "Meaningful" consultation, the report underscored, requires the full sharing of information.

B. Reporting, Congressional Action, and the Sixty-Day Clock

Section 4(a) of the WPR elaborates on the reporting requirements. The President is enjoined to submit a written report to the Speaker of the House and the President pro tempore of the Senate within forty-eight hours when "in the absence of a declaration of war" armed forces are sent "(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, airspace or waters of a foreign nation, while equipped for combat . . . ; or (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." The report must explain the conditions compelling the use of the military, "the constitutional and legislative authority" under which the action is occurring, and "the estimated scope and duration of the hostilities or involvement." As long as troops remain in hostile or potentially hostile situations, periodic reports to Congress must be submitted.

The House underscored in its War Powers bill that it intended to impart broad meanings to the WPR terms "hostilities" and "imminent hostilities:

The word *hostilities* was substituted for the phrase *armed conflict* during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which fighting actually has begun, *hostilities* also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. "Imminent hostilities" denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict.

The reporting requirements in § 4(a)(1)—i.e., situations of hostilities or imminent hostilities—relate to congressional action in § 5. Most notably, the § 4(a)(1) reporting obligations trigger the time limitation in § 5(b). Section 5(b) stipulates that within sixty days "after a report is submitted or is required to be submitted pursuant to § 4(a)(1)," the President must end deployment of forces unless Congress has declared war, has authorized the action, has extended the sixty-day period, or cannot convene because of an attack on the U.S. (The sixty-day period may be lengthened by thirty days if the President "determines and certifies" to Congress that safe and prompt troop removal mandates the extension.) Failure to label a report under § 4(a)(1) technically does not delay or stop the clock-triggering process, because the time limitation takes effect if a report was, as the WPR states, "required to be submitted pursuant to § 4(a)(1)." In addition, according to § 5(c), at any point Congress may require that military involvement be terminated by passing a concurrent resolution.

13. Id.
15. 50 U.S.C. § 1544(c) (1988). Yet in the aftermath of the Supreme Court decision in the case of INS v. Chadha 462 U.S. 919 (1983), the validity of this concurrent resolution is uncertain. Thus, in 1983 Congress passed legislation substituting a joint resolution for a concurrent resolution. Although not amending the WPR, this measure offers procedures that can be invoked if the Supreme Court strikes down section 5(c).
C. Interpretation of WPR

Section 8 addresses the construction, intent, and effect of the WPR by placing the law within the framework of past and future laws and treaties, as well as the Constitution. Several provisions within § 8 pertain to this research. Section 8(a) insures that authority to introduce troops cannot be inferred from anything other than explicit authorization; past and future laws (including appropriations measures), security treaties, or broadly-worded resolutions are not to be used as authorization for sending troops into hostilities or situations of imminent hostilities. To underscore this prohibition, § 8(a)(1) provides that no law is to impart congressional authorization unless it specifically allows for entrance into hostilities and recites that it is so intended. Section 8(a)(2) enacts that no treaty, old or new, can be used to infer authority to go to war unless such authority is spelled out specifically. In the words of Professor Charles Black, Jr., § 8(a), as a whole, thus strips

the President bare of any possible justification under law for piecing together, out of any actions or utterances other than specific statutory authorization of involvement in hostilities—specifically labeled as such—some kind of implied Congressional consent. Congress has itself prohibited the putting of such words into its own mouth. Section 8(b) further highlights the importance of explicit congressional action by way of a carefully limited exception.

II. FROM OPERATION DESERT SHIELD TO OPERATION DESERT STORM: A BRIEF RECAP OF KEY EVENTS

On August 2, 1990, Iraqi troops under President Saddam Hussein’s direction invaded and seized control of Kuwait, and proceeded toward Saudi Arabia. In response to the incursion, President George Bush issued executive orders freezing Iraqi and Kuwaiti assets in the U.S., and banning trade and transactions with, and travel to, Iraq. In addition, before departing for the August recess (August 4), the House and Senate each passed separate pieces of legislation essentially supporting the President’s executive orders; neither of these measures, however, became law.

The flurry of activity continued throughout August. From August 2-7 Bush consulted with over a dozen foreign leaders. Then on August 7 Bush decided to intervene in the Gulf. He and his aides called congressional leaders on August 8 to inform Congress of the impending action; a few hours later he addressed the nation. The next day, Bush reported to Congress “consistent with” the WPR that he had deployed U.S. troops “to deter Iraqi aggression and to preserve the integrity of Saudi Arabia.”

17. 50 U.S.C. § 1547(a).
19. See id. at 276.
22. Letter to the Speaker of the House and the President Pro Tempore of the Senate on the Deployment of United States Armed Forces to Saudi Arabia and the Middle East, 26 Wkly. Comp.
wrote, "I do not believe involvement in hostilities is imminent." Bush's first extended discussion with congressional leaders occurred on August 15. Also in August, at the administration's urging, the United Nations imposed economic sanctions against Iraq.

In October 1990 both bodies passed separate legislation supporting the U.S. troop deployment; again, neither measure became law. The House approved H.J. Res. 658, backing Bush's actions up to that point, citing some WPR requirements, and quoting Bush's declaration that involvement in hostilities was not imminent. The Senate-approved measure, S. Con. Res. 147, also stated support for Bush's actions. The Senate resolution did not mention the WPR, although senators did discuss it in the surrounding debate.

Also in October 1990, the congressional leadership designated a joint bipartisan group of members to be available for consultation on Gulf developments during adjournment. Bush met with the consultation group on October 30—the day he decided to double the number of troops in the region—but he did not mention the upcoming buildup. On November 8 (after the 1990 elections), Bush ordered an additional 150,000-200,000 troops to the Gulf to insure "an adequate offensive military option." He officially informed the consultation group of this decision on November 14. Two days later, Bush sent Congress a report describing the deployment; the report restated that hostilities were not imminent, without citing the WPR.

Later in November, at the administration's encouragement, the U.N. Security Council passed Security Council Resolution 678. This measure authorized member states to use "all necessary means" to implement the Security Council's resolutions and restore peace and security in the area, unless Iraq complied with the U.N. resolutions by January 15, 1991. Administration officials claimed at that time Bush did not need congressional authorization to use force to implement the U.N. resolutions. Many members, however, disagreed. In response to the events, some members called for reconvening Congress in December 1990 to debate issues surrounding the use of force. Instead of reconvening, committees in both bodies held hearings.

After the 102d Congress commenced, the leadership announced that debate on the Gulf situation would begin on January 10. Two days before that date and a week before the January 15 U.N. deadline—on January 8—Bush requested a congressional resolution supporting "the use of all necessary means to implement U.N. Security Council Resolution 678." Bush's letter did not mention the WPR; Bush stated that
he simply was asking Congress to "join" with and "express its support" for him "at this critical time."33

On January 12, Congress responded to Bush's letter with legislation. After defeating resolutions calling for continued reliance on economic sanctions, both houses passed separate resolutions authorizing the use of force pursuant to Security Council Resolution 678; the Senate subsequently passed the House version, H.J. Res. 77, now P.L. 102-1.34 Under P.L. 102-1, before exercising such force, the President was to report to Congress his determination that the U.S. had exhausted all peaceful means to obtain Iraqi compliance with Security Council resolutions, and that those efforts had not been and would not be successful. In terms of the WPR, P.L. 102-1 stated that, "consistent with" § 8(a)(1) in the WPR, the law constitutes "specific statutory authorization within the meaning of [the WPR's] section 5(b)."35 P.L. 102-1 also noted that it did not supersede any WPR requirement. Along the lines of the WPR, the law required presidential reports to Congress at specific intervals. Notwithstanding these provisions, as he signed H.J. Res. 77, Bush underscored that his position had not changed on the WPR's unconstitutionality.36

III. THE NEXUS BETWEEN THE WPR'S PROVISIONS, AND THE ACTIONS AND DECISIONS ON U.S. PERSIAN GULF POLICY

In the following sections, I examine executive compliance with the WPR’s letter and intent throughout the Gulf crisis, and the congressional response to the administration’s actions. On the surface, the WPR’s failure to meet its sponsors’ main (stated) objective stands out—this failure appears by looking at compliance with the procedures intended to help insure collective judgment. More specifically, meaningful consultation neither occurred nor was demanded; a report under § 4(a)(1) was neither filed nor seriously solicited; and the 60-day time limitation was neither triggered by the executive nor invoked independently by Congress. In addition, the § 8(a) provisions regarding the necessity of explicit congressional authorizations were neither heeded by the administration nor emphasized in Congress.

A. Consultation

1. Presidential Action

The Bush administration did not initiate meaningful consultation with members of Congress on events in the Persian Gulf. Indeed, members’ advice and opinions were never sought when decisions were pending. Three examples of key administration decisions capture the nature of the discussions that occurred throughout the period, and illustrate as well the administration’s views on consultation and executive consultation

18 (Jan. 8, 1991) [hereinafter Letter to Congressional Leaders].
33. Id.
War Powers Resolution

First, in August 1990, Bush did not consult with Congress in the five days between the August 2 Iraqi invasion and the final determination to intervene militarily; instead, information simply was transmitted to a few congressional leaders just before Bush's August 8 national television address. Through these five critical days of decision-making when the administration failed to seek Congress's input, the administration did confer with foreign leaders. Bush made twenty-three telephone calls to twelve foreign leaders, flew to Colorado to consult with British Prime Minister Margaret Thatcher, assigned Secretary of State James Baker to confer with his counterparts abroad, sent Defense Secretary Richard Cheney to Saudi Arabia to negotiate with King Fahd, and then dispatched Cheney to confer with other key foreign officials. Ultimately, Bush alone authorized the troop deployment following Cheney's meeting with Fahd.

Despite the administration's lack of consultation in August, some of Bush's advisers nevertheless complained at the time about consultation obligations. For instance, one aide complained, "It'll be easier to get the U.N. to agree than Congress." Therefore, another aide explained, "It's true we've promised to consult Congress if there's a war. In other words, we'll phone them just after the first bombs have been dropped."

Second, the President did not consult with Congress on the decisions to double the number of troops in November 1990 and simultaneously alter the U.S. strategy "from defense and containment to offense and rollback by force." Bush again consulted foreign leaders about this matter. Bush, however, did not even mention it to the official congressional consultative group during a meeting with the key legislators on the day he made the determination, October 30. Rather, he simply began notifying congressional leaders informally of his decisions over a week later (on the day he ordered the additional troop deployment), calling Senator Sam Nunn, then Chair of the

37. The WPR requires the president to consult with "the Congress." Bush, however, chose to inform only a limited number of key legislators. Despite the law's wording, such practice has become common. Note also that since Bush claimed that hostilities were not imminent, as discussed below (infra note 59 and accompanying text), he might have claimed that the lack of imminent hostilities rendered consultation under the WPR unnecessary. He did not, though, appear to explicitly make the linkage between the perceived lack of imminent hostilities and his actions regarding the consultation requirements.

38. Rourke, supra note 4, at 23. Bush also reviewed the extent of his administration's talks with foreign leaders, as well as mentioning forthcoming discussions, in his August 8 national address: President's Message to the Nation Announcing the Deployment of United States Armed Forces to Saudi Arabia, supra note 21.

39. P. Salinger & E. Laurent, Secret Dossier: The Hidden Agenda Behind The Gulf War (1991); Weymouth, supra note 28. And even before the Cheney-Fahd talks, according to an administration official, "there was a conclusion that we needed to put a defensive posture into Saudi Arabia to let Saddam know that an attack against Saudi Arabia was an attack against the U.S." Devroy & Balz, For Bush, Moment of Decision Came Saturday at Camp David, Wash. Post, Aug. 9, 1990, at A31.

40. P. Salinger & E. Laurent, supra note 39, at 176.
41. Id.
43. President's Letter on Additional Deployment, supra note 29.
Senate Armed Services Committee, for example, and saying, "We are switching from a policy of defensive and blockade to a policy of offensive and invasion." Bush then officially informed the consultation group of his actions on November 14.

Third, the administration did not consult with Congress on its choice to seek a U.N. Security Council Resolution authorizing member states to use "all necessary means" against Iraq after a certain date unless Iraq complied with the U.N. resolutions. Bush explained his actions and the absence of consultation at a news conference soon after the November 29th passage of Security Council Resolution 678: "I cannot consult with 535 strong-willed individuals. I can't do it, nor does my responsibility under the Constitution compel me to do that." Yet this lack of consultation occurred even though the requested Security Council Resolution and deadline would set in motion developments affecting U.S. forces and their involvement in hostilities. Note also that the congressional consultation group was intended to facilitate consultation on just such an issue.

2. Congressional Response and Action

Despite the absence of meaningful consultation, members generally gave the administration high marks for keeping Congress informed of executive decisions before the troop doubling in November. On October 1, 1990, the House even passed H.J. Res. 658, which stated that Bush "has consulted with the Congress and has kept the Congress informed with regard to the [troop] deployment" in the Gulf. Notwithstanding widespread support for the administration's informational briefings, some members of Congress were concerned about actions that might be taken by the administration during the October 1990 to January 1991 adjournment. These concerns prompted the congressional leadership to establish a formal congressional consultative mechanism for use during that period.

It was not until November 1990 when Bush doubled the number of troops in the Gulf and changed the mission's orientation without consulting the congressional consultative group, though, that many members began vocally expressing concerns about the absence of meaningful consultation. Senator Nunn explained, "When the announcement was made that there was going to be another buildup of forces that was going to
have an offensive mission and there was no consultation prior to that, that was when a lot of people—including myself—started asking questions.”

Nunn further noted, “I was informed. I was not consulted . . . . There is a big difference between being informed after a decision has already been made and getting your views [heard] before one is made.”

A longtime Bush friend and supporter, former Representative (and ranking minority member on the House Foreign Affairs Committee) William Broomfield, “angrily charged that the administration’s failure to consult more closely with key lawmakers ‘is the main reason support for the policy is eroding.’”

Although congressional discontent increased in November, Congress did not demand that the President seek the advice and opinions of members when any subsequent decisions were pending. Neither the House nor the Senate took any legally-binding legislative action to try to force Bush to comply with the letter and spirit of the § 3 consultation provisions. The only quasi-attempt to mandate consultation emerged in the form of a lawsuit, *Dellums v. Bush:* on November 20, 1990, Representative Ronald Dellums, and forty-four other members of Congress, filed court action to block an offensive presidential move in the Persian Gulf unless the President had consulted with, as well as received authorization from, the Congress. In this instance, however, members based their suit on the Constitution, not the WPR.

3. Summary Comments On Compliance with Section Three

The Bush administration’s circumvention of its obligation to consult with Congress, and the subdued congressional response to the administration’s interpretation of the law, highlights the WPR’s failure to achieve its sponsors’ goals regarding consultation. The 1973 House report’s clarifying language notwithstanding, the executive branch simply informed members of its decisions and credited itself for “diligently” consulting. Yet true consultation—in the spirit in which § 3 intended—did not characterize Bush’s meetings with and briefings for Congress; members’ advice and opinions could never influence executive actions since decisions were never pending when notification occurred. Despite this pattern of executive noncompliance, Congress did not demand faithful execution of the consultation provisions.

Might the exigencies of the moment have prevented consultation? The WPR, indeed, provides a caveat, requiring consultation only “in every possible instance.” In
this case, though, the exception to the consultation requirement was inapplicable: administration officials invariably had sufficient time to consult with Congress on key decisions. The initial August 1990 determination to deploy troops exemplifies this phenomenon. If the President and his top officials could place calls around the world and travel domestically as well as abroad to consult with foreign leaders, the mile plus up Pennsylvania Avenue to Capitol Hill should not have presented an insurmountable obstacle to consultation. The exigencies of the moment also did not preclude consultation in October and November—the President again had ample time to confer with foreign leaders. The lack of meaningful consultation thus cannot be attributed to the “in every possible instance” caveat. Instead, the Bush administration just chose to follow precedent and construe the § 3 consultation requirements narrowly. Furthermore, Congress failed to demand more faithful compliance with the law’s letter and intent.

B. Presidential Reporting, the Sixty-Day Clock, and Related Congressional Action

I. Presidential Action

President Bush submitted three War Powers reports to Congress regarding the Gulf troop deployment. On August 9, Bush reported “consistent with” the WPR that he had deployed U.S. forces, thus following tradition by using the “consistent with” wording. Unlike previous Presidents’ reports, however, his first report explicitly claimed that hostilities were not imminent. In so doing, the administration perhaps sought to quell any discussion regarding a filing pursuant to § 4(a)(1) and the triggering of the sixty-day clock. The second report to Congress, describing the continuing and increasing deployment of forces, arrived on November 16, eight days after Bush doubled the number of troops in the Gulf. (This letter did not meet the forty-eight hour reporting requirement in § 4(a).) In the letter Bush reiterated his August 9 statements that imminent hostilities were absent and that “the deployment would facilitate a peaceful resolution of the crisis.” Bush filed the third report on January 18, 1991, “consistent with” the WPR; he stated in the report that he had directed U.S. troops “to commence combat operations on January 16.” (Since P.L. 102-1 provided the specific authorization for the use of force within the meaning of § 5(b) of the WPR, no further presidential action was required at the time under the WPR.)

Despite Bush’s wording in the first two reports, the question of whether troops were sent into hostilities or a situation of imminent hostilities, and thus whether a
report was required to be submitted pursuant to § 4(a)(1), remains open. Let us examine the facts as presented by the administration. The day before claiming in his first WPR report that hostilities were not imminent, Bush said, "Iraq has massed an enormous war machine on the Saudi border, capable of initiating hostilities with little or no additional preparation."\(^{63}\) And on September 16, Bush told the Iraqi people that the two nations were "on the brink of war."\(^{64}\) On September 20, Bush requested that the U.S. forces in the Gulf receive imminent danger pay. And soon afterward, Cheney warned that Hussein "may seek to use military force to break the stranglehold that the embargo has imposed."\(^{65}\) Furthermore, upon submitting his second WPR report, Bush concomitantly raised the specter of an offensive military initiative: "The deployment will ensure that the coalition has an adequate offensive military option should that be necessary."\(^{66}\) The very words and deeds of the Bush administration thus cast serious doubt on its claim that troops were not "in imminent danger of hostilities."

In addition to the three formal war powers reports, one other written communication merits discussion here: Bush sent Congress a letter on January 8, 1991, seeking a congressional resolution supporting the U.N. Security Council actions. Bush asked Congress in the letter to "express its support for the President at this critical time."\(^{67}\) The letter included a somewhat veiled warning that if Congress failed to pass an authorization Bush would proceed nonetheless: he wrote, "I am determined to do whatever is necessary to protect America's security."\(^{68}\) In discussing the letter with reporters, Bush explained his belief that authorization was not a prerequisite for presidential action: "I don't think I need it . . . I feel that I have the authority to fully implement the United Nations resolutions."\(^{69}\) And according to a key administration official, "Even if Congress had failed to back the president [in January], Bush planned to send American forces into combat . . . if Saddam didn't pull out. The U.S. troops would have operated under Article 51 of the U.N. Charter, . . . ."\(^{70}\) Hence, these administration statements (both written and verbal) in January, 1991, further underscore that the President did not accept the spirit of the § 4(a)(1) reporting requirements applicable in situations of hostilities and imminent hostilities.

2. Congressional Response and Action

Congress did not pass legally-binding legislation to force compliance with the reporting requirements when the Bush administration misconstrued the language regarding reporting and finessed its reporting obligations to avoid the sixty-day clock. Although members introduced legislation pertaining to both the application and circumvention of the WPR reporting requirements, Congress did not address Bush's disregard for the law in a timely and decisive fashion—in a manner conforming to the intent of the WPR's sponsors—on any WPR measure during the critical months before January,

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63. Nightline, supra note 5.
64. Glennon, supra note 3, at 100.
66. President's Letter on Additional Deployment, supra note 29.
67. Letter to Congressional Leaders, supra note 32.
68. Id.
70. Article 51 of the U.N. Charter authorizes any U.N. member (e.g., Kuwait), to use its own force in self-defense and to ask for others' assistance. Weymouth, supra note 28.
1991. A review of congressional actions, as well as individual members’ actions and statements, illustrates the overall nature of Congress’s response.

In August, 1990, Congress had the option of triggering the sixty-day clock. Given the Bush administration’s statements regarding the distinct possibility of hostilities, Congress could have challenged Bush’s characterization of the situation in his August letter—that hostilities were not imminent—and invoked § 4(a)(1) to start the clock. The WPR states that the time limitation takes effect if a report was “required to be submitted pursuant to § 4(a)(1).” Yet members long have embraced the incorrect executive argument that without unambiguous presidential language about filing pursuant to § 4(a)(1), the time limitation is not categorically triggered. Thus, Congress took no action to start the clock.

Similarly, in September and October, although members in both bodies had suggested invoking the law to put Congress on record for or against Bush’s policy, this did not occur. Instead, in early October the House and Senate each passed separate measures, neither of which demanded faithful execution of the law. The Senate concurrent resolution did not even mention the WPR. (See supra p. 27, first full paragraph.) This failure to incorporate members’ WPR concerns into the resolution prompted Senator Mark Hatfield to ask his colleagues, “Why, why do we avoid our responsibilities that we defined for ourselves and passed, in spite of a President’s veto, into law?”

The House measure, in contrast, cited the WPR, but did not declare that § 4(a)(1) had become operative. Furthermore, the House acquiesced to the extent of quoting Bush’s statement that involvement in hostilities was not imminent: H.J. Res. 658 stated that, consistent with the § 4(a)(1) requirement, Bush declared in his August 9 report that he believed involvement in hostilities was not imminent. This legislative response provoked Representative DeFazio’s quip: “our” troops, sailors, allies, and constituents all think hostilities are imminent, but “only here in . . . Congress and . . . at the White House do we try to ignore the reality of the Persian Gulf confrontation.”

DeFazio echoed this sentiment: “The President has once again failed to properly comply with the law, and Congress has offered him its congratulations.”

After the November doubling of troops in the Gulf region, almost all members

75. Id. at H8450 (daily ed. Oct. 1, 1990).
76. Id. at H8453.
77. Id. at H8454.
War Powers Resolution

appeared to think that the prospect of war had increased; Congress did not, however, explicitly express the view that the clock had started. Although Congress was in recess at the time, the leadership could have asked Bush to reconvene Congress for a special session so that such legislative action could be taken. But Congress did not reconvene, and hence no legislative action was taken.

In fact, it was not until January 1991 that members mustered the requisite will and forged the necessary consensus to pass a measure in identical form by both bodies regarding the WPR. By that time, however, the sixty-day WPR cutoff had come and gone almost three times, the U.S. had committed nearly a half-million troops, U.N. resolutions had been passed at the Bush administration’s urging, and America’s prestige and Bush’s personal credibility were fully engaged. And while the congressional resolution nominally met WPR requirements—as explicit authorization under the 1973 law—the commitment to go to war was made much earlier without the requisite congressional participation. Former Senator John Heinz, who supported the authorization to use force, lamented nonetheless:

I believe that it is unfortunate that we shirked that [War Powers] responsibility for months. There is more than enough blame to go around: we in the Congress wanted to play a waiting game, and the President supported that game, since it provided him with the latitude he needed and wanted in dealing with the United Nations and Iraq. The waiting game also may have left Congress with little choice of what to do. As a trusted Baker confidant queried, “How could our Congress not support something that Ethiopia was supporting? That the Soviet Union was supporting?”

3. Summary Comments On Compliance with Sections Four and Five

Senator William Cohen argued in the fall of 1990, “It seems to me that this extraordinary commitment of U.S. forces to the Persian Gulf, which clearly has the potential to involve the United States in hostilities, is precisely the sort of situation envisioned when the War Powers Resolution was enacted.” And Senator Hatfield was even more specific about the applicability of §§ 4(a)(1) and 5 in stating that “[w]hen Bush said the troops were not in imminent danger, he misrepresented the reality of the case.” Despite the apparent accuracy of these two assessments about the relevance of §§ 4 and 5, both branches, by and large, ignored the letter and spirit of the sections. More specifically, the administration misconstrued the language regarding reporting and finessed the reporting requirements so that it could claim the sixty-day clock did not commence. And Congress passed no legislation in response to the executive’s actions regarding reporting and the sixty-day clock. Indeed, it was January of 1991 before both bodies passed any identical measure dealing with the WPR, and that measure essentially disregarded the sixty-day clock as well by providing specific statutory authorization under § 5(b).

It is also interesting to note the relative lack of committee attention that §§ 4 and

78. Doherty, supra note 52, at 3879.
82. Telephone interview with Sen. Mark Hatfield (Sept. 13, 1993).
5 of the WPR received in this crisis. Previous military maneuvers sometimes prompted hearings specifically addressing the WPR and presidential adherence to it. In contrast, no committee organized such a hearing regarding U.S. policy in the Gulf. Clearly, in several House and Senate committee hearings, members focused considerable attention on the law, but no hearing devoted itself solely to the nexus between the WPR and the Gulf crisis. When the Judiciary Committee decided to examine U.S. policy within a more legalistic framework in a January 8, 1991 hearing, it explored the scope of Congress's constitutional war powers, rather than focusing on the WPR and its applicability to the imminent hostilities in the Gulf.

C. Section Eight

1. Presidential Action

Based on the Bush administration's actions and statements, one might assume that § 8 did not exist. The administration intimated that in appropriations and other measures Congress already had given its implied consent to enter hostilities. Implied consent, however, is insufficient; in theory, in § 8 Congress a priori had invalidated Bush's arguments about not needing specific congressional authorization before attacking Iraq. Furthermore, § 8(a) illustrates that the administration's more explicit rationale for not needing congressional authorization—that Bush had "the authority to fully implement the United Nations Resolutions"—also was inaccurate. Section 8(a) enacts the proposition that laws, treaties, or broadly-worded resolutions cannot be used as authorization for introducing troops into hostilities or situations of imminent hostilities.

2. Congressional Response and Action

Notwithstanding the Bush administration's selective disregard for § 8, Congress did not emphasize the existence and meaning of the § 8 provisions. Congressional discussion of the executive's misinterpretation of the law in this regard appears limited to committee hearings.

D. Summary Assessment

A review of Bush's compliance record with the WPR in the Gulf crisis and the congressional response to the administration's interpretation of the law certainly highlights the WPR's failure to achieve its sponsors' goals. Meaningful consultation neither occurred nor was demanded; a report under § 4(a)(1) was neither filed nor seriously solicited; the sixty-day time limitation was neither triggered nor invoked independently by Congress; and the § 8(a) provisions were neither heeded by the administration nor

83. Burgin, supra note 58.
84. Senate Judiciary Hearings, supra note 71.
85. See, e.g., SCFR Gulf Hearings, supra note 18, at 120-26.

emphasized by members of Congress. Thus, not only did the administration circumvent the law, but Congress also acquiesced by failing to use the WPR to its fullest potential.87

IV. STILL A FACTOR: THE IMPACT OF THE WPR ON CONGRESSIONAL ACTION IN THE PERSIAN GULF

Former Representative Dante Fascell, Chair of the House Foreign Affairs Committee from 1984-1992, claimed that congressional action in the Gulf crisis indicated that the WPR "is alive and well."88 Based on the intentions of the WPR's sponsors, and the decision making surrounding the troop deployment and war in the Gulf, we have seen that the characterization of the WPR as "alive and well" is quite a stretch. Although the WPR is not achieving its authors' goals and hence is not technically "alive and well," in this section I show the partial truth in Fascell's statement—the WPR still may be a factor affecting the procedure and symbolism surrounding congressional action. Indeed, the law appeared to loom in the background throughout the crisis, with countless members raising the WPR in legislative proposals, hearings, and floor speeches. And when Congress authorized the use of force in January 1991, it did so under the WPR. Even though Congress (just like the administration) did not begin to adhere to the law's guidelines, and even though the WPR did not affect the substance or orientation of U.S. policy in this case, many members nevertheless indicated implicitly that they perceived the WPR to be anything but a "dead letter." In a subsequent instance of military involvement a law such as this theoretically may, of course, directly or indirectly alter the substance of U.S. policy as well.

Thus, to examine whether the WPR in fact exerted any influence on congressional action in the Gulf crisis, in this section I move beyond an analysis of events alone. Through direct discussions with members and their aides, I obtained insight into another dimension of the WPR question—the views of the legislative actors themselves on the WPR's possible impact on Congress. If the congressional players who must employ the WPR believe that the law affects their institution, that information demands consideration. And to gain an outside perspective on and an assessment of legislative actors' statements about the nexus between the WPR and Congress's actions, I further interviewed senior Bush administration officials.

A. The Sample and the Interviews

In this research I used several different types of interviews. First, 365 structured telephone interviews with members' staff people responsible for the Persian Gulf issue were conducted: 288 in the House and seventy-seven in the Senate. I generated the sample by having an interviewer telephone every congressional office several times in the summer of 1991; the interviewer tried to reach the staff person directly involved

87. Several obstacles to demanding faithful execution of the law merit acknowledgment. Congress left for its August recess soon after Iraq invaded Kuwait; thus, members were not in Washington, D.C. when Bush announced his decision to deploy troops. And when Congress reconvened, it (along with the nation) focused on the controversial budget talks. Furthermore, the efforts made by members to invoke the WPR were opposed by House and Senate leaders, "who consider[ed] the resolution unworkable," Madison, supra note 72.

with the Gulf issue to ask him or her to participate in this study. The interviewer first telephoned all congressional offices once, making call-backs as suggested by either the appropriate congressional aide or the office receptionist. She then repeated this procedure several times. Hence, each of the 535 members of Congress had a chance of being included in the sample. Staffers were, by and large, receptive to the calls—less than a dozen aides refused to participate in the study. The sample includes 365 members rather than over 500 members, not because of a high refusal rate, but rather because of the time-consuming nature and difficulty of contacting appropriate aides to interview. (As illustrated in Appendix A, the selection process yielded a sample that reflects Congress’s diversity.)

I chose to interview significant numbers of congressional aides, not only because staffers are relatively more accessible than members, but also because interviewing staffers is an appropriate research method for studying members’ views on an issue. Certainly, some may argue that staff responses provide an indirect and thus imperfect measure. Nonetheless, previous studies demonstrate that congressional aides offer reliable information. The interviewer also guaranteed total anonymity to staffers and their bosses to further encourage frank replies. Furthermore, to confirm the accuracy of staff responses I conducted interviews with eight members; in all cases the staff answers about their perceptions of their bosses’ thoughts perfectly reflected the members’ views. The correlation is not surprising: staff people see one of their responsibilities as comprehending their bosses’ decisions and thought processes. And considering the importance, salience, and historic nature of the Gulf issue, congressional aides both understood and remembered the specifics surrounding their bosses’ thoughts here.

This paper uses data from three “yes/no” questions that were posed to staffers:
(1) Do you think that the WPR had any effect on congressional action in the Persian Gulf crisis? (2) Do you think that your boss thinks that the WPR had any effect on congressional action in this case? (3) Did your boss ever mention the WPR to you when you were discussing the crisis? The answers to these questions were coded 0 for “no” and 1 for “yes.”

To flesh out the information gathered from the telephone interviews, I conducted several in-person interviews with key congressional aides in the summers of 1992 and 1993. These interviews actually were more in the nature of open-ended discussions with aides about the WPR and the Persian Gulf crisis. Again, I provided the staffers with anonymity for themselves and their bosses.

Next, to confirm the accuracy of staff responses and to obtain members’ first-hand reflections about the WPR, in the summer and fall of 1993 I interviewed members who were key actors in the Gulf debate. In all, I spoke with eight (current and former) legislators, including both Democratic and Republican senators and representatives. I conducted six of the interviews in person, and six of the members agreed to have the interviews be for attribution. As with the in-person staff interviews, I posed only open-ended questions. A list of the questions appears in Appendix B. Note that

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89. In most cases, the legislative director or a legislative assistant handled the issue; in a limited number of cases the administrative assistant worked most closely with the member on this matter.
the first question I posed to members is identical substantively to the second question to which staffers responded. In all cases the member-staff answers corresponded perfectly—congressional aides were correct in their assessments of whether their bosses thought the WPR had an effect on congressional action in the Persian Gulf case. Hence, staff responses provide an appropriate mechanism for studying this issue.

Finally, to gain the executive branch’s perspective on the relevance of the WPR for understanding congressional action during the Gulf crisis, I interviewed three senior Bush administration officials. These interviews took place in the spring of 1994 and were conducted over the telephone. The former administration officials preferred that I guarantee their anonymity. I posed the same open-ended questions to the senior officials as I posed to the members of Congress. The interview questions, thus, appear in Appendix B.

B. Interview Findings

The WPR’s failure to achieve its sponsors’ goals, as already described, is not tantamount in participants’ eyes to the WPR’s failure to have any impact whatsoever on congressional action. The results from the extensive staff interviews show that a majority of those interviewed believed that members perceived the WPR exerting an effect on congressional action during the Gulf crisis. It thus is fair to say that this indicates that a majority of members thought that the WPR was a pertinent influence on Congress. Interviewees’ responses also suggest that the influence of the WPR may be difficult to detect simply by examining technical compliance with the law.

Table 1: Impact of the WPR on Congressional Action in the Persian Gulf Crisis, 1990-1991: Means Test Based on Sample of 365 Members of Congress

<table>
<thead>
<tr>
<th>Member Data</th>
<th>Aide Perceived Impact of WPR</th>
<th>Aide Believed Member Perceived WPR Impact</th>
<th>Member Raised WPR with Aide</th>
</tr>
</thead>
<tbody>
<tr>
<td>All cases</td>
<td>.68 (351)</td>
<td>.61 (316)</td>
<td>.63 (349)</td>
</tr>
<tr>
<td>Chamber</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>House</td>
<td>.69 (279)</td>
<td>.61 (250)</td>
<td>.63 (278)</td>
</tr>
<tr>
<td>Senate</td>
<td>.65 (72)</td>
<td>.64 (66)</td>
<td>.66 (71)</td>
</tr>
<tr>
<td>Party</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democrat</td>
<td>.71 (205)</td>
<td>.68 (185)</td>
<td>.69 (207)</td>
</tr>
<tr>
<td>Republican</td>
<td>.65 (146)</td>
<td>.52 (131)</td>
<td>.55 (142)</td>
</tr>
<tr>
<td>Vote on resolution to use force</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>.72 (146)</td>
<td>.69 (130)</td>
<td>.72 (148)</td>
</tr>
<tr>
<td>Yes</td>
<td>.66 (205)</td>
<td>.56 (186)</td>
<td>.57 (201)</td>
</tr>
</tbody>
</table>

Table 1 includes the mean scores of the three “yes/no” questions staffers an-
answered regarding the WPR. As seen in the second data column in Table 1, over 60% of the respondents believed that their bosses saw the WPR as a relevant factor affecting Congress. Over 50% of Republicans even perceived the WPR as affecting congressional action. Consistent with these general findings, over 60% of the respondents said that their bosses raised the WPR issue with them during the crisis. Considering the widespread belief that the law influenced congressional action, the legislators’ war powers discussions with their aides are not surprising.

1. A Second Look: The Relevance of the WPR

How, though, did members perceive the WPR as affecting congressional action? As I discuss in this section, the impact of the WPR appears quite subtle to members themselves (thus making it particularly hard to discern for outside observers who only examine the events as they unfolded). The WPR seems to prompt action—just not the action intended by the law’s sponsors. Through several examples I will illustrate this elusive and sometimes indirect nature of the WPR’s influence on congressional action in the Gulf crisis, as it appeared to the respondents. The first two ways in which the WPR appeared relevant may relate generally to many situations of troop involvement; the subsequent three examples, in contrast, relate quite specifically to congressional action taken in the Gulf crisis. It is important to note at this point that senior Bush administration officials generally concurred with legislators’ assessments of the WPR’s impact; one senior executive official even stated, “We talked about it so much amongst ourselves because they [members] raised it, and we knew they were talking about it.”

First, and most broadly, according to some members, the existence of the WPR facilitated congressional action by providing Congress with a tool to “get in the game,” thus reinforcing Congress’s legitimate role. Representative David Bonior, when House Majority Whip, explained, “The WPR was an important vehicle for us to exercise our constitutional mandate ... It gave us a way to jump in to a defense of our constitutional responsibilities.” And as Dr. Robert Hunter (Director of European Studies at the Center for Strategic and International Studies) testified, “The great value of the War Powers Resolution is that it is there. It is an assertion of congressional involvement—even if that assertion is contested.”

Former Representative Matthew McHugh echoed this sentiment: “The WPR was the framework for the debate that took place .... It reinforces the argument that Congress has a responsibility to participate—whether the executive accepts the constitutionality of the WPR or not, it is the law.”

Senior Bush administration officials agreed that the WPR “provided a vehicle” for congressional involvement. As one top official described it,

The WPR is really a congressional instrument, even though it technically is the law of the land .... I imagine that for congressional Democrats and Republicans, for

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91. Telephone Interview with a Senior Bush administration official (Apr. 25, 1994).
94. Interview with former Rep. Matthew McHugh, Washington, D.C. (July 28, 1993). Although in fact reinforcing Congress’s role is unnecessary technically—the Constitution provides a sufficient foundation for congressional action—members’ perceptions that their institutional prerogatives need reinforcement makes this relevant. Legislators react to their own views of reality, which may not always correspond completely with most observers’ characterizations of reality.
various reasons, the WPR was a useful hook. They can hang their involvement on it, whether they are enthusiastic about it or not... It is seen as more central to them than to the executive—it is the principal formal vehicle for Congress.95

Second, since the WPR is the law of the land, members may sense that they should try to adhere to it. (One of the issues in the Gulf crisis was, indeed, respect for the rule of law.) If Congress ignored the law within the context of the Gulf crisis, Senator Hatfield quipped, it would be "the embodiment of hypocrisy;" as such, Senator Cohen wrote, it might "invite not only a contempt for the rule of law but contempt for Congress itself."96 Senator Nancy Kassebaum essentially agreed with these assessments:

I am not a supporter of the WPR, but it is a law of the land. Since it is, ... we have got to make sure it works or else some of us would like to see it, of course, banned. But as long as it is there and as long as it is the law of the land, I think we have to adhere to it.97

Along these lines, another senator argued, "Because the WPR is the law of the land we couldn't ignore it with any good conscience."98 This sense that members need to prove respect for the law, perhaps at a minimum by trying to comply with some of the law's provisions, undoubtedly translates into concrete action. Through concrete action legislators may indicate that the WPR is applicable and of consequence, and that they appreciate that fact.

Third, according to key inside players, the existence of the WPR helped to prompt former congressional leaders Mitchell and Foley in October 1990 to designate a group of legislators to serve on a joint bipartisan consultation body during adjournment; if the WPR was not the law of the land, it appears unlikely to some members that these leaders would have created such a body. Bonior explained, "The leadership was very sensitive to consultation because of the WPR.... The WPR was very important in getting the leadership to set up the group."99 A senior Bush administration official agreed that "the leadership probably wouldn't have formed this sort of a group were it not for the WPR."100 Former Chairman Fascell elaborated,

There may not have been any real formal consultation without the WPR.... And in our meetings with Bush [probably taking place because of the WPR] we asked him to set up such a consultative group [for use during adjournment] on his own. We even told the administration to name whoever they wanted to be in the group, but the administration didn't act.... So the leadership took it on themselves to do it.101

95. Telephone interview with Senior Bush administration official (Apr. 25, 1994).
97. SCFR Gulf Hearings, supra note 18, at 108.
98. Interview with key senator (Sept. 16, 1993) (anonymity requested). Some may argue that this "guilty conscience from not adhering to the law" prompted members to say, after the fact, that the WPR affected congressional action when it actually did not. Little evidence of this theory, however, exists. The argument was not even made by the senior Bush administration officials with whom I spoke.
99. Interview with Bonior, supra note 92.
100. Telephone interview with Senior Bush administration official (Apr. 26, 1994).
Thus, the WPR requirement for consultation generated an expectation that meaningful consultations would occur; this expectation evolved into concern over the administration's actual commitment to adhere to the WPR guidelines, and the concern over the administration's commitment led to the leadership action.

Fourth, the legislative action taken in January 1991, in the eyes of key participants, was tied to the WPR's existence as well. Beyond the language and form of the resolution that Congress passed—granting statutory authorization to use force under § 5(b) of the WPR—the fact that legislative action occurred at all may be linked to the WPR. Even Representative DeFazio, a prime WPR critic, admitted, "The reason we finally had a vote was because of the WPR, defective as the WPR is." The WPR affected congressional action here, according to members, by influencing Bush's actions toward Congress, prompting a congressional response. DeFazio explained the first level of this interaction: "Bush wouldn't have bothered to come in January for an authorization if the WPR wasn't on the books." Fascell expanded on this point:

The president kept saying in meetings that he could go it alone. But many of us kept telling him he couldn't, that he needed the support of the American people and the Congress. If the WPR wasn't there, he might have taken the bit in his own mouth, a la Johnson, and gone on his own ... The fact that we had a dialogue between the president and the Congress here, and kept telling him this, was important.

McHugh elucidated the next level of this interaction:

Bush wouldn't have sent the [January] letter if the WPR wasn't there, and so there wouldn't have been a vote. Let's say though that even if the WPR wasn't on the books, Bush sent the letter. The supporters of Bush would have said, "Let's vote." People opposed to military action might have said, "Let's not vote. Let's not respond to the letter." In the abstract, they would say, "We don't support military action, and he can't act without congressional action, so that is that. And we don't have to do anything, and then he can't do anything."

The existence of the WPR, however, forced members opposed to the substance of Bush's request to agree on the necessity of a vote; as McHugh noted, "The process reflected a consciousness in Congress of the existence and relevance of the WPR, and the importance of congressional action." Fascell agreed: "The WPR kept Congress in the act ... Congress could not be silent, and Congress could not speak through designated leaders only ... Even if Congress just rubber stamped presidential action, ... the WPR kept Congress involved." Thus, although Congress's vote came at the 11th hour and executive decisions largely determined the course of events, it is

104. Id.
105. Interview with Fascell, supra note 101. In addition, as I allude to below (see infra p. 43), it could be that Bush wanted to try to avoid the possibility of Congress at some later date invoking the WPR and calling for the withdrawal of troops—by receiving authorization to use force he would most likely preclude this from happening.
106. Interview with McHugh, supra note 92. It is also interesting to recall that in the pre-WPR period Congress was not likely to jump in to the fray and exert its constitutional responsibilities in the area of war-making.
107. Id.
108. Interview with Fascell, supra note 101.
still significant that Bush sought congressional support before going to war and that Congress passed legislation authorizing the use of force. Both the presidential letter and the subsequent congressional vote were probably due, in large part, to the WPR.

Finally, and related to the previous point, for some members who supported Bush’s policy and wanted to maintain presidential flexibility, the WPR appeared as a nuisance requiring shackling; these members believed that they shackled the WPR through the January 1991 legislative action. Senator John Warner explained,

The WPR is on the books for every member to use as he or she wishes. It gives any member a ticket to question the president. So in [the resolution authorizing the use of force] we made sure that no member could bring up the WPR at some point and invoke it.\textsuperscript{109}

A senior Bush administration official echoed this sentiment,

To insure the issue came out right from our perspective, we had to engage Congress. But we began our discussions regarding the January votes from the premise that we wouldn’t go in with a sixty-day clock. One needed to deal with the WPR without legitimizing it. The WPR is an unworkable piece of legislation.\textsuperscript{110}

In other words, the WPR affected congressional action, according to some participants, because it was a law that needed to be addressed head-on—through legislation—to preclude potential problems. A law that is a “dead letter” does not demand such attention, however negative the attention may be.

\textbf{V. FINAL THOUGHTS: A MORE BALANCED ASSESSMENT}

The WPR certainly has failed to achieve its authors’ main intentions; the law does not insure that collective judgment applies to the introduction and continued use of troops in situations of hostilities or imminent hostilities. Nevertheless, this failure does not reduce the WPR to a meaningless document, which has no effect on congressional action. Members believe that the WPR affected Congress in several ways in the Persian Gulf crisis, even if it did not clearly alter the actual substance of U.S. policy. The WPR’s impact is far less direct than the law’s sponsors intended under some of the mechanistic procedures they created, but the impact remains real to participants. In other words, the WPR still matters.

Broadly speaking, the WPR exerted its greatest effect on congressional action in the Gulf crisis by furnishing legislators—in several ways that outside observers may find difficult to detect—with the requisite “push in the behind.” The WPR offered members a vehicle for trying to assert Congress’s institutional prerogatives. Along these lines, the law reinforced Congress’s legitimate role to participate, as well as individual members’ responsibilities to participate. In addition, the WPR affected congressional action because it is the law of the land, and as such, some members sensed a duty to try to adhere to some of its general guidelines.\textsuperscript{111}

Beyond these rather abstract and ambiguous consequences, and also in part be-


\textsuperscript{110.} Telephone interview with Senior Bush administration official (Apr. 25, 1994).

\textsuperscript{111.} Although in previous instances of military initiatives the WPR also established a foil for attacking a policy’s substance, this factor appeared less important in the Gulf case. On previous cases, see Burgin, \textit{supra} note 58.
cause of them, the WPR affected congressional action in the Persian Gulf crisis in concrete ways, as well. If the WPR did not exist, the congressional leadership probably would not have created a joint bipartisan consultation body for presidential use during the 1990-1991 adjournment. And much more importantly, members believe that without the WPR, Congress would not have taken legislative action in January 1991. Regardless of the reason why or the way in which the WPR affected the January 1991 action, a diverse group of participants widely recognized its impact. As Dr. Lawrence Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs, Installations, and Logistics in the Reagan administration clearly articulated, “That vote certainly sets a precedent . . . . It sure as heck will be pretty hard not to vote from here on in . . . . Next time, Congress will have to take a stand.”

Indeed, it is easy to downplay, and also to underestimate, the significance of a law that obviously fails to achieve its stated objectives. It may seem, in fact, to be somewhat counterintuitive to contend that an act which does not meet its sponsors’ intentions nonetheless remains a relevant factor affecting congressional action. Yet congressional actors make a strong case that the WPR did just that in the Gulf crisis, and several senior Bush administration officials do not dispute this general assessment. Hence, if legislators, congressional staffers, and executive branch officials perceive the WPR exerting an effect on congressional action, these perceptions should not be scorned. Insiders’ perspectives about Congress’s actions are based upon expertise, unique insights, and informal discussions to which outside observers are not ordinarily privy. Moreover, because legislators react to their own views of reality, not seemingly objective observers’ characterizations of reality, the legislators’ perspectives on the impact of the WPR may, in some sense, become self-fulfilling prophesies.

In sum, criticizing the WPR as a failure, after examining President Bush’s circumvention of its provisions in the Gulf crisis and Congress’s inability to try to force faithful compliance during that period, is an easy as well as an intuitively appealing exercise. Yet criticizing the WPR as a failure after such an examination is also problematic since such criticism is based upon an incomplete and simplified picture of a more complex situation. If one digs below the surface, it becomes readily apparent that the WPR exerts an indirect and subtle effect on congressional action. It certainly did in the 1990-1991 Gulf crisis.

112. Telephone interview with Dr. Lawrence Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs, Installations, and Logistics in the Reagan administration (Apr. 26, 1994).
Appendix A

Sample Breakdown

Table 2: Sample Breakdown

<table>
<thead>
<tr>
<th>Member Data</th>
<th>All cases</th>
<th>House of Reps.</th>
<th>Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>All cases</td>
<td>365</td>
<td>288</td>
<td>77</td>
</tr>
<tr>
<td>Party</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democrat</td>
<td>215</td>
<td>170</td>
<td>45</td>
</tr>
<tr>
<td>Republican</td>
<td>150</td>
<td>118</td>
<td>32</td>
</tr>
<tr>
<td>Elected</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-1970</td>
<td>37</td>
<td>29</td>
<td>8</td>
</tr>
<tr>
<td>1970-79</td>
<td>107</td>
<td>76</td>
<td>31</td>
</tr>
<tr>
<td>1980-85</td>
<td>102</td>
<td>88</td>
<td>14</td>
</tr>
<tr>
<td>1986-90</td>
<td>119</td>
<td>95</td>
<td>24</td>
</tr>
<tr>
<td>District marginality*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 60%</td>
<td>130</td>
<td>92</td>
<td>38</td>
</tr>
<tr>
<td>60% and over</td>
<td>234</td>
<td>196</td>
<td>38</td>
</tr>
<tr>
<td>Bush district support</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54% and under</td>
<td>167</td>
<td>130</td>
<td>37</td>
</tr>
<tr>
<td>Over 54%</td>
<td>198</td>
<td>158</td>
<td>40</td>
</tr>
<tr>
<td>Region</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>East</td>
<td>71</td>
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<tr>
<td>Midwest</td>
<td>99</td>
<td>81</td>
<td>18</td>
</tr>
<tr>
<td>South</td>
<td>121</td>
<td>95</td>
<td>26</td>
</tr>
<tr>
<td>West</td>
<td>74</td>
<td>57</td>
<td>17</td>
</tr>
<tr>
<td>Vote on resolution to use force</td>
<td></td>
<td></td>
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<tr>
<td>No</td>
<td>152</td>
<td>113</td>
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<tr>
<td>Yes</td>
<td>213</td>
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<td>Committee or leadership position</td>
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<tr>
<td>No</td>
<td>237</td>
<td>211</td>
<td>26</td>
</tr>
<tr>
<td>Yes</td>
<td>128</td>
<td>77</td>
<td>51</td>
</tr>
</tbody>
</table>

*Marginality statistics are missing for one senator who was appointed to his post.

Table 2 breaks down the sample, as a whole and by chamber, according to seven contextual factors: (1) a member's party affiliation (with the sole Independent coded as a Democrat);\(^{113}\) (2) a member's seniority; (3) a member's district marginality, based

\(^{113}\) According to Congressional Quarterly, “had [Sanders] voted as a Democrat, his party-unity score would have been 84 percent; his opposition score would have been 8 percent; and his unity
on the most recent race prior to January 1991; (4) President Bush's support in a member's district in the 1988 presidential election;114 (5) the region in which a member's district falls;115 (6) a member's vote on the resolution authorizing the use of force in the Persian Gulf; and (7) whether a member held a leadership post or a relevant committee position.116 As seen in Table 2, the selection process clearly achieved sample diversity.

score, adjusted for absences, would have been 92 percent." See Party Unity and Party Opposition: House, 49 CONG. Q. WKLY. REP. 3790 (1991). Considering these figures, it is logical for the purposes of this research to code him as a Democrat.

114. Bush received about 54% of the popular vote nationwide. I thus used 54% as the bench mark for testing a district's support for Bush: supportive districts included those in which Bush received over 54% of the vote; nonsupportive districts qualified as those in which Bush received 54% of the vote and under.


116. I defined relevant committee position broadly: House Foreign Affairs Committee; Senate Foreign Relations Committee; House and Senate Armed Services Committees; House and Senate Select Intelligence Committees; and House and Senate Foreign Operations Subcommittees and Defense Subcommittees of the Appropriations Committees. Appropriations Committee members on other Appropriations subcommittees have virtually no jurisdiction over topics under the Foreign Operations or Defense Subcommittees' purview. See, e.g., S. SMITH & C. DEERING, COMMITTEES IN CONGRESS (2d ed. 1990); E. Burgin, Representatives' Involvement in Foreign and Defense Policy Issues: Do Issue Characteristics Affect Participation? 31 (1994) (forthcoming in Congress and the Presidency, Spring 1995).
Appendix B

Interview Questions Asked of Members of Congress and Senior Bush Administration Officials

After brief introductory remarks and a review of some key events in the Persian Gulf crisis (as it occurred a few years earlier), I moved on to the questions.117

(1) Do you think that the WPR (or the existence of the WPR) had any effect on congressional action in the Persian Gulf crisis? If so, how? If not, why not?
(2) If the WPR was not the law of the land, do you think that congressional action might have been any different? If so, how? If not, why not?
   (a) Do you think that the legislative action in October might have been different if the WPR wasn’t the law of the land?118
   (b) Do you think that Congress would have acted as it did regarding the formation of a joint bipartisan group of members to be available for consultation during adjournment if the WPR hadn’t been the law of the land?
   (c) Do you think that Congress would have taken the legislative action that it did in January if the WPR wasn’t the law?

(3) Do you recall discussing the WPR during the Gulf crisis with your colleagues or your staffers?
   (a) If so, do you recall the point during the crisis in which it came up?
   (b) If so, did you discuss it extensively with them?

4) (Depending on previous answers . . . ) In the telephone interviews with staffers, over 60% of the aides said that they thought their bosses believed that the WPR affected congressional action in the Gulf crisis.
Depending on previous answers, I asked a, b, or c.
   (a) Are you surprised in any way by this figure? If so, how? If not, why not?
   (b) Are you surprised that this figure is so high? Explain.
   (c) Are you surprised that this figure isn’t higher? Explain.

(5) Do you think that the congressional action or inaction regarding the WPR in the Persian Gulf crisis serves as an important precedent for either Congress or the executive? If so, how? If not, why not?

117. Note that in most cases I did not actually ask the precise question listed here, because the matter arose naturally in the course of conversation.
118. I had reviewed the October legislative action, as well as all of the other actions listed below, at the beginning of the interview.