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Congress by substituting “declare” for “make” in that clause. This was done in an age when the declaration was already in disuse, there having been 38 wars in the Western World from 1700 to 1787, the year of the Constitutional Convention, and only one of them was preceded by a declaration of war. From this, it is clear that even by the 18th century, the declaration had come to mean no more than a formal notice to the world and to one’s own people that an already existing state of war was officially acknowledged. This is how it is defined in the sole standard dictionary of the English language then published, the famous Samuel Johnson work, and it is how the Constitution has been interpreted during the succeeding 183 years of practice.

The truth is, there are circumstances in which any President must have flexibility of action in order to meet a present crisis which might develop into an unalterable threat against our national security in the future, as well as to cope with a crisis which clearly presents a “direct and imminent” danger as described in H.R. 2053, or “extraordinary and emergency circumstances,” as referred to in House Joint Resolution 2.

As early as 1836, John Quincy Adams stated:

However startled we may be at the idea that the Executive Chief Magistrate has the power of involving the Nation in war, even without consulting Congress, an experience of fifty years has proved that in numberless cases he has and must have exercised the power.

In all there have been at least 204 foreign military hostilities in the history of our Republic and only five of them were declared. Congress has never once passed a law blocking or ordering a halt to any of them. These incidents show a consistent practice under which American Presidents have always responded to foreign threats with whatever force they believed was necessary and technologically available at the particular moment. The idea that Presidential troop commitments are a recent development is a myth.

To those who contend this concept gives an unrestrained power to the President to do anything he wants, I would remind them that I am speaking only of defensive responses by the Executive. The President cannot conduct a war of aggression. He cannot begin a war of conquest of another’s territory. He cannot bully another country with threats of armed action simply because we do not like its tariff policies or the way it governs its own internal affairs. His constitutional power of independent action is limited to self-defense of our country, its people, and its freedoms, whenever and wherever in his judgment a danger exists, imminently or prospectively, which compels a response on our part. And to those who contend this concept will lead to another Vietnam, I answer that this ignores recent history. In the words of a Washington Star editorial, the contention that war powers legislation would have stopped Vietnam “is a monumental piece of historical hogwash.”

It has now been judicially determined that Congress was involved up to its ears in the expansion of the Vietnam war. I could detail at least 24 statutes in which Congress has specifically spoken of Vietnam over the past two decades and has authorized the conduct of that campaign. These collaborations, enacted after full and open debate, placed Congress knowingly and squarely behind U.S. military operations in Southeast Asia.
The real story is that Presidents and their Cabinet members have spent an enormous amount of time working with Congress and striving to put the two branches in unison. It would be folly to alter this longstanding constitutional arrangement by a mere statute. Congress does not need new legislation to give it a place in the political command centers. It already has a very forceful and effective policymaking position. Through its power of the purse, Congress has basic control over the size and strength of the military sinews with which the President can wage war. In addition, Congress can grant or withhold a multitude of emergency powers bearing on foreign trade and the distribution of strategic materials and other economic elements that comprise the Nation's defense machinery.

Members of Congress also enjoy a prominent public forum from which they can immediately and easily gain the ear of a free press and reach the American people directly with their own alternatives to executive policies. Moreover, Congress can reject treaties or resolutions with defense implications.

These are the means by which the founders meant for Congress to share in deciding questions of war and peace and, in my opinion, Congress cannot alter this arrangement by any legislation short of a constitutional amendment.

Mr. Chairman, before closing I would like to identify some of the specific areas which trouble me the most about the text of the measures and where there appears to be a contradiction between the plain language of the legislation and the explanations given by its sponsors. Since H.R. 2053 is similar to S. 440, a Senate bill with which I am familiar, I will direct most of my comments to H.R. 2053.

One. Senator Javits, author of the Senate version of H.R. 2053, argued the President can use his own "judgment and discretion" as to when an emergency fits one of the four situations when he can use Armed Forces under the bill.

Yet, nowhere in S. 440 or H.R. 2053 is there any language providing that the President may make an independent judgment of any kind under the bill. In fact, a legal brief introduced in the Senate hearings record by Senator Javits argues that the President is the mere executive arm of the Congress who must follow the dictates of the legislative branch. I would note that House Joint Resolution 2 is more generous to the Executive in this respect by providing in section 3 that U.S. forces may be used when the necessity to respond in the judgment of the President constitutes extraordinary and emergency circumstances.

Two. The sponsors of S. 440 and H.R. 2053 claim the President can take whatever forestalling action is needed without waiting "until the bombs actually started landing on our soil." They claim the bill is not inflexible.

But the actual text of H.R. 2053 requires that before the President takes any defensive measure there must be an armed attack on the United States or our Armed Forces, or "the direct and imminent" threat of such an attack. In the case of an attack on a foreign nation, for example a part of Turkey where we have no troops deployed, the "direct" threat would be to that nation, not to the United States. The threat would be imminent to that nation, but distant to us. If a move against Turkey actually carried with it an implicit threat against the United States, it would only be because the attack set in motion a
chain of events which ultimately might represent a serious threat to us. If it is the sponsors' purpose to allow the President flexibility in these circumstances, as they contend, then they must intend "direct" to mean "indirect," and "imminent" to mean "some indefinite date in the future." In contrast, I might observe, House Joint Resolution 2 wisely avoids using the ambiguous and undefined terms "imminent" or "direct" threat and instead recognizes the power of the Executive to act whenever he sees any act or situation that "endangers" the United States or its citizens.

Three. The sponsors of S. 440 and H. R. 2053 claim it is the purpose of section 3, clause (4), to ratify the Formosan, Cuban, and Middle East resolutions as authority for the President to respond to crises in these areas.

The bill itself plainly states that no provision of law now in force shall be construed as authority for Presidential action unless it "specifically authorizes" the introduction of troops in hostilities. But all of the area resolutions mentioned do not specifically grant authority for the commitment of U.S. forces in armed actions. One, the Formosan resolution, does provide that "the President of the United States be and he hereby is authorized to employ the Armed Forces..." In contrast, however, the Cuban resolution states only that "the United States is determined" to take certain steps. The Middle East resolution is even weaker. It merely declares "the United States is prepared to use armed forces" and qualifies even this declaration by expressly providing that such employment shall be consonant "with the Constitution of the United States."

It must be remembered, Mr. Chairman, that a similar phrase "in accordance with constitutional processes," as used in our mutual defense treaties, is argued by the authors of H.R. 2053 to mean that no specific authority is given pursuant to such treaties. The sponsors do not explain what the difference is between the term "constitutional processes" as used in treaties and "consonant with the Constitution" as used in the Middle East resolution. In short, the authors are reading section 3(4) as containing a proviso that these three area resolutions shall constitute specific authority for emergency use of American forces, when the section itself does not contain any reference at all to such resolutions. House Joint Resolution 2 is silent on this question, except that it allows the use of troops "pursuant to specific prior authorization" by statute or concurrent resolution. No prohibition is made in House Joint Resolution 2 as to what may constitute such an authorization, again granting an important area of flexibility that is missing in H.R. 2053.

Four. Senator Javits has claimed there is full authority for the U.S. 6th Fleet to be deployed in the Mediterranean at will by the President during times of crisis under S. 440 and H. R. 2053.

The bill itself, however, specifically directs that U.S. forces shall not be introduced in situations where imminent involvement in hostilities is at risk except in the narrow situations where the United States or U.S. forces are attacked or directly and imminently threatened with attack. In the 6-day Middle East War of 1967, for example, the United States itself was not directly threatened with attack; nor was there any imminent threat to American forces. There was an open and imminent threat made by Russia against Israel. Premier Kosygin actually called President Johnson over the hot line to warn...
that Russia was prepared to take military action against Israel. President Johnson's prompt response by moving the 6th Fleet into the danger area in order to forestall Russian pressure on Israel would be prohibited under H.R. 2053 because no threat had been made against our own forces. For the sponsors of the bill to say that an American response is authorized in these facts reveals that the authors do not understand the implications of their own bill. House Joint Resolution 2 is not clear as to what action the President might take in the above situation.

Five. Senator Javits claims it would "be a faulty and distorted reading of the legislation," to infer that S. 440 and H.R. 2053 would prohibit U.S. personnel in the NATO integrated commands from exercising any functions without additional congressional authorization. The language of section 3(4) flatly states that specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to "command" or "coordinate" in the movement of the military forces of any foreign country or government at any time when there exists an imminent threat that the forces will become engaged in hostilities. Thus, at the very moment when our participation in the NATO unified command would be needed the most, the bill squarely prohibits U.S. personnel from exercising any functions. House Joint Resolution 2 is silent on the question of whether this situation is covered by its terms.

Six. H.R. 2053 and S. 440 use three totally different ways of describing what constitutes an "imminent threat." Section 2 refers to "the imminent threat of attacks," while section 3 refers both to "situations where imminent involvement in hostilities is clearly indicated" and situations where there is a "direct and imminent threat" of an armed attack.

When is an attack "imminent" but not "direct and imminent"? When is our imminent involvement in hostilities "clearly indicated" but the threat of attack against our forces nor "direct and imminent"? The sponsors of the bill have never given an explanation of what the difference is between "imminent" as used in one provision and that used in another. House Joint Resolution 2 does not entertain this problem, though it presents a different one by using the phrase "extraordinary and emergency circumstances." What this means is left undefined and appears to be properly left for definition by the President in his judgment in the setting of each crisis as it may occur.

In summary, House Joint Resolution 2 is clearly the most flexible legislation of the two in allowing room for protection of the United States and its 210 million citizens. But, in my opinion, it is unwise to legislate any rules in this field which is already treated by the Constitution and which has never been defined by Congress or the courts in our 183 years of life under that document.

Mr. Chairman, with your permission, I would like to ask that two recent law review articles on this subject may be printed with your hearings. One is a paper which I wrote for the law journal of Arizona State University and the other is a revised edition of an analysis of American military hostilities outside the United States without a declaration of war which my legislative assistant, Mr. Terry Emerson, first published in the West Virginia University Law Review.

[The articles follow:]
The President's Ability To Protect America's Freedoms — The Warmaking Power

Barry M. Goldwater*

The Senate Foreign Relations Committee has ordered favorably reported Senate Bill 2956, which lays down rigid rules to govern the President's use of the Armed Forces in the absence of a congressional declaration of war. With this bill in the background, Senator Goldwater discusses the historical military actions taken by American Presidents and Congress' responses to these actions. He then examines the constitutionality of congressional limitations on the President's warmaking power and concludes that, while Congress holds control over the size and strength of the country's military machinery, the President's power to use that machinery when he feels the country is in danger cannot be restrained by congressional policy directives.

I. CONTEMPORARY SETTING

On November 17, 1971, President Nixon signed a $21.3 billion military procurement bill, but emphasized in doing so that he would ignore a so-called end-the-war rider as being "without binding force or effect" and failing to "reflect my judgment about the way in which the war should be brought to a conclusion." Hours later, the House of Representatives rejected, for the fourth time in 1971, a proposal to set a specific deadline for ending the United States military involvement in Indochina.*

Not to be deterred by two setbacks in one day, Senator Mike Mansfield, the distinguished Majority Leader of the Senate and author of the troop withdrawal amendment just torpedoed by President Nixon, promptly opened

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*Member, United States Senate (Arizona).

2. 29 CONG. Q. WEEKLY REP. 2371 (1971). (The Act was signed Nov. 17, 1971.) President Nixon's comments were directed at section 601 of the Act, the "Mansfield Amendment." Id.
3. The proposal was in the form of an amendment to the 1972 Department of Defense Appropriations Act, H.R. 11,731, 92d Cong., 1st Sess. (1971), calling for a halt in funding for any military support by United States forces in or over Indochina after June 1, 1972. It was rejected by a vote of 193 to 238. See text of amendment at 117 CONG. REC. H 11,170 (daily ed. Nov. 17, 1971) and vote, id. at H 11,196–97.
a new attack on the Executive's military authority. The next day another Mansfield amendment was reported to the Senate—a prohibition on spending attached to the 1972 Department of Defense Appropriation Act which sought to force the withdrawal of 60,000 American troops from NATO. This time the President needed no aid from the other Chamber, since the Senate voted on November 23 to reject the limitation by 39 yeas to 54 nays.

The senior Senator from Montana had yet one more challenge waiting in his campaign against Executive discretion, however, for only a week earlier the Senate had passed his third amendment of the year aimed at terminating all United States military operations in Indochina. The amendment set a final date for the withdrawal of all United States forces within 6 months, and was coupled to the Special Foreign Military and Related Assistance Act. The first session of the 92d Congress might still be deadlocked over this issue had not the House of Representatives voted against the proposal a week before Christmas.

However, the most sweeping challenge of 1971 to the President's foreign policy prerogatives stayed alive. I refer to Senate Bill 2956, a bill to codify the rules governing the use of the Armed Forces in the absence of a declaration of war. This legislation, awesome in its implications, was ordered reported favorably on December 7, 1971, by a unanimous vote of the Senate Committee on Foreign Relations.

Thus closed the legislative year 1971, the second succeeding year in which Congress had undertaken a massive effort to reverse what many members of Congress call the erosion of the legislative branch by Presidential usurpation. Many lawmakers and constitutional writers treat the current moves by Congress as a momentous occasion, precipitated by what they allege to be a completely unprecedented example of Presidential warmaking during the past quarter century. But is the experience of Executive initiative in the use of military force truly a modern phenomenon—a departure from long-

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7. Id.
11. See pages 429—31 supra.
standing tradition? Is the recent struggle in Congress to impose controls over the waging of war an historical first, unknown until now in view of the general self-restraint by earlier Presidents? Or are the present maneuverings between the two political branches of our government merely a sign of recurring ripples in the stream of history? Who, if anyone, possesses the dominant powers to wage war; to authorize the initiative of war; to deploy men, equipment, and supplies? What checks and balances are there on the war powers? What control does Congress or the President have over the other in regard to making war? What kind of hostilities, if any, can our nation legally engage in without a formal declaration of war? All these questions, and more, are interwoven in the current effort by Congress to restrict the President’s ability to wage war. It is my hope that this Article will help illuminate these issues.

II. HISTORICAL OVERVIEW

A. Presidential Initiatives

It may come as a shock to many Americans that the United States has been involved in at least 197 foreign military hostilities in its history, only five of which have been declared wars. These incidents took place all over the world. Nearly half involved actual fighting, and no less than 111 actions were undertaken solely on Executive authority without the initial support of any related statute or treaty, let alone a declaration of war. A few commentators have brushed aside these precedents as being “short-lived,” or “minor undertakings,” or almost exclusively “confined to the Western Hemisphere.” But it is a fact that 93 actions lasted more than 30 days, a considerable number involved the landing of many thousands of American troops on foreign soil, and exactly 100 occurred outside the Western Hemisphere.

14. The five declared wars are the War of 1812, the War with Mexico, the Spanish-American War, and World Wars I and II.
15. See generally, Emerson, supra note 13, app. A (chronological list of 192 United States military hostilities abroad without a declaration of war, prepared at my request).
16. At least 81 hostilities were accompanied by fighting or ultimatums. Id. app. D.
17. See the list of 81 hostilities which may arguably have been initiated pursuant to prior legislative authority, id. app. C. But it should be observed that 51 of these possible collaborations by Congress took the form of a treaty. Thus, if a full-blown congressional declaration of war would be required to commit United States forces to hostilities, the fact that 51 activities may have been authorized by treaty and therefore by one House of Congress alone, would not serve as a precedent for the requirement of declarations of war in other circumstances.
20. See testimony of Professor Henry Steele Commager, who claims the precedents are confined to the Western Hemisphere and contiguous territory up to “the last twenty years or so,” with one exception. Senate War Powers Hearings, supra note 12, at S 3355.
21. See Emerson, supra note 13, app. E.
22. Id. app. A.
These operations include the capture of 90 French ships during the period from 1798 to 1800, the sinking or capture of 65 pirate vessels in the Caribbean prior to 1825, several landings and punitive actions abroad to defend or evacuate United States citizens and their property, the dispatch of 2,000 sailors and marines to force open commercial trade with Japan in the 1850's, the use of 126,468 troops to suppress the Philippine Insurrection after the 1898 treaty of peace with Spain was concluded, the deployment of several thousands of troops ashore in China from 1900 to 1941, the Fershing Expedition into Mexico with 12,000 men, the commitment of 14,000 men to Allied expeditions in Russia a year and a half after Armistice Day, the Korean Conflict of the 1950's, the occupation of parts of Lebanon in 1958 by 14,000 American soldiers and marines, the super-power confrontation between the United States and the Soviet Union during the Cuban missile crisis of 1962, and the Vietnam hostilities, among many others.

B. Early Congressional Response

Obviously, little wars are not a "phenomenon new to the national experience." Nor have past Presidents been immune from congressional sniping at their military policies. Throughout the early years of this century, there were dozens of attempts in Congress to shackle the President's right to use military power. In 1912, Senator Bacon proposed an amendment to the Army Appropriation Bill which would have prohibited the use of any money provided by that law for the pay or supplies of any part of the Army of the United States employed, stationed, or on duty in any country or territory beyond the jurisdiction of the laws of the United States or in going to or returning from points within the same. This amendment, which would have restricted all United States troops to the United States or its possessions, was defeated without a record vote.

23. Id. app. F.
24. Id. app. A.
26. President Tyler was denounced in Congress and threatened with impeachment because he deployed military units to protect Texas against Mexico in 1844. C. Bell Dahl, War Powers of the Executive in the United States 47-49, 70-74 (1921). President Polk was rebuked in a resolution passed by the House of Representatives declaring that the war with Mexico, which his military maneuvers had precipitated, "was unnecessarily and unconstitutionally begun by the President of the United States." Id.
27. 48 Cong. Rec. 10,927 (1912).
28. Id. at 10,930.
1919, several Members of Congress introduced measures aimed at ordering American soldiers home from Europe and challenging the presence of our troops in Siberia as unconstitutional.29 The only one that passed, however, was a watered-down resolution by Senator Hiram Johnson, simply requesting the President to provide Congress with information on the Siberian Expedition.30 Then in 1922, a major effort was made in Congress to control the geographical deployment of American forces. The House Committee on Appropriations reported the War Department funding bill with a provision specifying:

No part of the appropriations made herein for pay of the Army shall be used, except in time of emergency, for the payment of troops garrisoned in China, or for payment of more than 500 officers and enlisted men on the Continent of Europe; nor shall such appropriations be used, except in time of emergency, for the payment of more than 5,000 enlisted men in the Panama Canal Zone, or more than 3,000 enlisted men in the Hawaiian Islands.31

After a vigorous debate squarely on the constitutional allotment of the war powers between the Executive and Congress,32 the House agreed, on March 24, to Representative Rogers' motion to strike out the committee restriction. John Rogers, a law graduate from Harvard and a seven-term Republican Congressman, presented an illuminating and scholarly discussion of the constitutional issues involved, which stands to this day as one of the greatest expositions ever made during a legislative attempt to run the details of the Armed Forces.33

The Senate made its move later in the year. On December 27, 1922, Senator Reed offered an amendment to the Naval Appropriation Bill designed to "at once cause the return to the United States of all American troops now stationed in Germany."34 The amendment was debated, but never accepted. On December 30, 1922, Senator King called up an amendment to the same appropriation measure providing:

That no part of said amount shall be used for the purpose of maintaining or employing marines, either officers or enlisted men, in the Republic of Haiti or the Dominican Republic after June 30, 1923.35

Senator King's amendment was rejected the same day.36 In 1925, he was again disturbed by the use of American troops in the Caribbean and again intro-
duced an amendment to the Naval Appropriations Bill. It stated that "no part of . . . any amount carried in this bill shall be used to keep or maintain any marines in the Republic of Haiti." Once more, Senator King's amendment was rejected. 

Three years later, the Senate engaged in one of the most fully-aired debates ever conducted on the question of congressional authority to restrict the power of the President to employ troops abroad—a discussion that would put to shame contemporary exchanges in that body which wander far afield of the true inquiries at the heart of the war powers issue. In 1928, the Senate focused its attention on an effort by Senator Blaine to prevent American forces from being used for intervention in the affairs of any foreign nation "unless war has been declared by Congress or unless a state of war actually exists under recognized principles of international law." The proposal was initiated in view of the feeling of several Senators that the United States military occupation of Nicaragua was not in accordance with the Constitution. Senator Blaine's broad amendment, and a more limited one by Senator McKellar which was confined to Nicaragua alone, would have directed the withdrawal of troops and marines from Nicaragua within 9 months, presaging the format of the first Mansfield amendment of 1971. Only the geographical area was different. Both the Blaine and McKellar amendments failed after a week of debate, by a vote of 22 yeas to 52 nays on the Blaine proposal and 20 yeas to 53 nays on the McKellar amendment.

By 1940, Congress did succeed in enacting a geographical limitation on the emplacement of United States units abroad. Section 3(e) of the Selective Service Act of 1940 expressly required that no draftees were to be employed beyond the Western Hemisphere, except in territories and possessions of the United States. Congressional debate on the provision confirms beyond doubt that it was the intent of its sponsors to limit the meaning of "Western Hemisphere" narrowly to the area of the Americas which "we have long engaged to protect under the Monroe Doctrine."

And yet, 1 year later President Franklin Roosevelt deployed our forces, including draftees, to hold Iceland and Greenland, months before the United States formally entered World War II. President Roosevelt's action in send-

37. 66 Cong. Rec. 2191 (1925).
38. Id. at 2215.
39. 69 Cong. Rec. 6991 (1928).
41. Id. at 6986.
43. 69 Cong. Rec. 7192 (1928).
44. Id.
45. 54 Stat. 885, 886 (1940).
46. 86 Cong. Rec. 10,355 (1940). See id. at 10,092, 10,103-05, 10,116, 10,129, 10,391, 10,742, 10,794-96, 10,895-91.
47. See Emerson, supra note 13, app. A.
ing troops more than 2,000 miles away from home bore out Senator Lodge's admission, as author of the restriction, that "[t]his is a pious hope." 19

A year before, Roosevelt had violated at least two of the post-World War I neutrality laws when he handed over 50 reconditioned destroyers to Great Britain in exchange for a series of military bases in the British West Atlantic. 40 President Roosevelt further moved this nation from a neutral into a belligerent status before the repeal of the neutrality laws by ordering the United States Navy to convoy military supplies meant for Britain and Russia as far as Iceland and to attack Axis submarines in the process. 41

III. CONGRESS REASSERTS ITSELF

A. Indochina Amendments

This historical sketch, while not exhaustive, demonstrates that individual Members of Congress have often criticized Presidential conduct of foreign hostilities, but seldom, and perhaps never, has the Legislative Branch as a unit directly challenged the President's decisions with statutes unequivocally ordering the Executive to withdraw troops from a specific geographic area, or prohibiting him from employing forces in certain situations. 42 Even recent highly-publicized endeavors by Congress to restrict Executive actions, fall far short of being outright shackles on his conduct.

For example, the Cooper-Church amendment, purportedly barring the introduction of new forces into Laos and Thailand, actually attempts to translate into law President Nixon's own pledges not to involve American ground combat troops in these countries. 43 This amendment, as enacted in the Department of Defense Appropriation Act of 1970, reads:

In line with the expressed intention of the President of the United States, none of the funds appropriated by this act shall be used to finance the introduction of American ground combat troops into Laos or Thailand.

Nothing is said about barring the sending of advisors to these two countries.

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40. 86 Cong. Rec. 10,807 (1940). The 1940 provision is a poor precedent for war powers legislation. Not only was it flaunted by President Roosevelt, but it was openly admitted during Senate debate that Congress could not constitutionally restrain the President from commanding troops wherever he wishes. Id. at 10,825–914.
41. Id. at 203. Schwartz concludes:

The President's action in this respect is of particular legal interest because of an express provision in the Lend Lease Act of 1941, that "Nothing in this Act shall be construed to authorize or permit the authorization of convoying vessels by naval vessels of the United States."

42. The 1940 law, which apparently barred the sending of troops outside the Western Hemisphere, was treated by both Congress and the President as merely a "hope" of Congress, not an actual limitation on Executive authority. See note 40 supra.
or requiring the removal of any American forces already there. Nor is there any mention of stopping the bombing, or how the provision is to be construed in the event its language no longer represents the President's position.

An identical provision was also enacted as part of the defense appropriations laws for 1971 and 1972. Indeed, President Nixon included the language of the 1970 provision in his own proposed budgets for these years.

Another quasi-restriction on the employment of United States forces, which cleared Congress in 1970, is a ban against the introduction of both United States ground combat troops and advisors into Cambodia. This provision, incorporated into the Supplemental Foreign Assistance Authorization Act for 1971, states:

In line with the expressed intention of the President of the United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

Again, the Administration posed no objection to the proposal. Secretary of State William P. Rogers testified that it "carries out the President's intention." In fact, Secretary Rogers may have facilitated passage of the amendment when he later wrote to Senator Church: "I should like to reaffirm that the Administration's program, policies, and intentions in Cambodia in no way conflict with the proposal." It should be noted that the amendment does not purport to cover the use of air and sea power. Nor, according to the conference report on the provision, does it prevent the use of United States troops in border sanctuary operations designed to protect the lives of American soldiers and United States military personnel to supervise the distribution and care of United States military supplies and deliveries to Cambodia, and...the training of Cambodian soldiers in South Vietnam.

Given such broad exceptions, I believe these provisions are no precedent at all for strict congressional supervision over the Executive's warmaking ability. In truth, they are no more than exercises in restating, with Presidential acquiescence, policy decisions which he had previously announced his intention to follow. Should the President, in viewing the world situation, feel compelled to alter his position, I further believe he could constitutionally...
avoid any of the above kinds of quasi-limitations on the basis of his independent powers, which I shall discuss in a later part of this Article."

In 1971, the House of Representatives rejected, on five occasions, specific deadlines for ending the hostilities in Southeast Asia, beating back, by the greatest majorities (158 to 234 and 163 to 238), two proposals which sought to cut off funds for the war. The Senate turned down its own version of the fund cut-off when it defeated the Hatfield-McGovern amendment by a 42 to 55 vote."

The Senate subsequently approved the first of three Mansfield amendments. The original provision, added to the Military Selective Service Act Amendments, declared it to be the policy of the United States to terminate at the earliest practicable date all military operations of the United States in Indochina and to provide for the prompt and orderly withdrawal of all United States military forces not later than nine months after the date of enactment of this section . . . ."

Senator Mansfield's amendment further "urges and requests the President to implement the above-expressed policy by initiating immediately" three described actions. But nowhere in this or in either of his other two proposals is there a tie to the congressional appropriation power, nor is there any suggestion that the policy expressed therein be binding on the President.

Even so, Congress watered down the first provision before enacting it, changing "the policy of the United States" to "the sense of Congress" and dropping the 9-month termination date entirely. When Congress subsequently did adopt a second Mansfield amendment as a declaration of "the

62. See pages 435-43 infra.
65. 117 Cong. Rec. S 9251, S 9279 (daily ed. June 16, 1971). Also, an effort to deny funds for use by our forces in Indochina for any purpose other than withdrawing such troops, was defeated when the Senate struck the Cooper-Church amendment from the Foreign Aid Authorization bill by a vote of 47 to 44. 117 Cong. Rec. S 17,060, S 17,075 (daily ed. Oct. 28, 1971).
68. Amend. no. 214, note 66 supra.
69. Id. The Amendment would require the President to (1) establish a final date for the withdrawal from Indochina of all United States military forces within 9 months, contingent upon the release of all American prisoners of war; (2) negotiate for an immediate cease-fire in Indochina; and (3) negotiate for phased and rapid withdrawals of United States forces in exchange for phased releases of American prisoners of war. Id.
policy of the United States," President Nixon emphatically announced his intention to ignore the policy," even though Congress had once again excised any specific timetable from the amendment." As mentioned above, the third Mansfield amendment was dropped in conference, after the House voted against it."11

B. Codification of War Powers

In 1971, the Senate Foreign Relations Committee closed out the book on Congress' efforts to reassert itself vis-a-vis the President by ordering Senate Bill 2956 favorably reported. This bill was introduced by the senior Senator from New York, Jacob Javits, to codify the war powers."7 S. 2956 is a redraft of a concept first proposed by Senator Javits in 1970." It has been taken up in varying form by 18 other Senators, who individually or jointly introduced five different proposals designed to define the sole conditions under which the Armed Forces of the United States shall be used in hostilities."

S. 2956 represents a compromise of all these approaches." Section 1 of the bill sets out the short title, "The War Powers Act of 1971." Section 2 contains a statement of purpose and policy. The primary thrust of S. 2956 is conveyed by section 3, which relates to the emergency use of the Armed Forces. The provision dictates that, in the absence of a declaration of war by Congress, the military power of the United States "shall be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances" only in four limited situations. The instances to which the President is restricted in using the Armed Forces are (1) to repel an attack upon the United States, take necessary and appropriate retaliatory actions in the event of such an attack, and forestall the direct and imminent threat of such an attack; (2) to repel an attack against our military forces located outside the United States, and forestall the direct and imminent threat of such an attack; (3) to evacuate endangered citizens of the United States located in foreign countries; and (4) to carry out a

72. See note 2 supra.
73. See note 2 supra.
74. See note 8 supra.
75. See note 9 supra.
specific statutory authorization, which shall never be inferred from any treaty or provision of law, including any appropriation act.

Section 4 of the bill provides for prompt reports by the President to Congress whenever troops are committed pursuant to section 3, and section 5 mandates that no hostility initiated under section 3 shall be sustained beyond 30 days without further congressional authorization. Moreover, section 6 states that hostilities commenced pursuant to section 3 may be terminated prior to 30 days by statute or joint resolution of Congress.

Section 7 establishes a legislative procedure under which congressional consideration of legislation authorizing the continuation of hostilities, or the termination of hostilities, shall be given priority treatment to guide such legislation through Congress in no more than 8 days from the date of its introduction, if sponsored or cosponsored by one-third of the Members of the House in which it is introduced. Section 8 sets the effective date of the law as the day of its enactment, but expressly excludes from its application, hostilities in which United States forces are involved on that date.

In short, the bill lays down rigid rules which are supposed to govern the nature and duration of the only situations in which the President may use United States military forces in hostile action. The term "hostilities" is not defined, and thus it is unclear whether our forces are to be so limited only in situations involving actual battles and the imminent threat thereof, or also in situations involving deployments of men and equipment stationed in a state of readiness or alert, for possible response to a developing emergency.

In either event, the bill represents the most sweeping attempt to govern Presidential use of America's military machinery that this country has ever witnessed.

IV. CONSTITUTIONALITY OF CONGRESSIONAL LIMITATIONS

A. Textual Allotments to Congress

The major role of upholding the constitutionality of legislation restricting the President's command over the use of the Armed Forces has been assumed

79. One of the bill's sponsors, Senator Stennis, has warned that "the Congress should not restrain the President's powers, as Commander in Chief, to deploy forces to crisis areas and, for example, show the flag by sending a carrier to stand offshore." 117 Cong. Rec. S 20,628 (daily ed. Dec. 6, 1971). Nevertheless, absent a definition of "hostilities," there is no guarantee on the face of the bill that American forces can be introduced in crisis situations without a divisive confrontation between Congress and the President, unless Congress agrees with the President in advance of each deployment. For example, if the Soviet Union invaded Rumania, it is doubtful the United States could build up its forces in certain areas of NATO. If it is "clearly indicated" (an undefined term) that American troops may be drawn into action, the limitations of S. 2956 would be triggered. In this case, our forces could not be shifted into position unless one of the four emergency conditions of the bill existed. This could mean the President must assure Congress, for example, that United States forces were directly and imminently threatened by the Soviet attack, a difficult burden of proof in such a volatile and unpredictable situation. But even should a redeployment or increase of American forces be permissible, the President would be required to withdraw our
by Senator Jacob Javits, with a significant helping hand from Senator William B. Spong of Virginia, a learned scholar of international law in his own right. In addition, such respected and nationally-known authorities as Professor Henry Steele Commager, Professor Richard B. Morris, Professor Alfred H. Kelly, Dean McGeorge Bundy, and Professor Alexander Bickel have testified that the Javits bill is in direct pursuance of the congressional war power. In essence, the advocates of war powers legislation contend that the major war powers are expressly granted to Congress by article I, section 8, of the Constitution. Here are found the powers to “provide for the common Defense”; “regulate Commerce with foreign Nations”; “define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations”; “declare War ... and make Rules concerning Captures on Land and Water”; “raise and support Armies”; “provide and maintain a Navy”; “make Rules for the Government and Regulation of the land and naval Forces”; “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrection and repel Invasions”; “provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States”; and “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

forces from the trouble spot after 30 days should Congress fail to extend his authority. Whether such a pullout would inflame the crisis rather than calm it, is a judgment the bill would thereby transfer from the President to Congress.


It may be recalled that in 1951, when President Truman was under attack for deploying American land forces to Korea and Europe without congressional authorization, Professor Commager lambasted Truman’s critics as “unregenerate isolationists.” He then insisted “that the overwhelming weight of authority supports Presidential discretion in this field.” Proposals calling for congressional approval before any American soldiers can be sent out of the country “have no support in law or in history,” he said. Commager, Presidential Power: The Issue Analyzed, N.Y. Times, Jan. 14, 1951, § 6 (Magazine), at 11; id., Apr. 1, 1951, § 6 (Magazine), at 31.

Also, it should be noted that Professor Bickel qualified his support of the legislation by saying:

I don’t think the President can be deprived of his power to respond to an imminent threat of attack (as well as to the attack itself); or of his power to respond to attacks and threats against our troops wherever they may be, as well as against our territory; or of the power to continue to see to the safety of our troops once they are engaged, even if a statutory 30-day period has expired.


In particular, it is argued that the Constitutional Convention intended, by reserving to Congress the power "to declare war," to leave with Congress the power "to authorize war." The constitutional concept of the President's role in the scheme of prosecuting war, is claimed to be built upon the experience of the Founding Fathers with the commission given to General George Washington by the Continental Congress when it appointed him to head the colonial forces. The last clause of the commission provided that General Washington was "punctually to observe and follow such orders and directions" as he should receive from the Congress. Also, heavy reliance is placed on the specific power of Congress to carry into execution, not only its own powers, but also all other powers vested by the Constitution in any officer of the Government. My distinguished and highly respected Chairman of the Senate Armed Services Committee, Senator John Stennis, commented upon the matter at the time of the introduction of the redraft, of which he is a cosponsor. He said that this clause is considered to grant Congress the power not only to carry "into execution" the powers vested in the President, but also to restrict and control those powers.

B. Textual Allotments to the President

Notwithstanding the current voices of astonishment over claims by the Executive that he may employ military forces on his own authority, many leading writers throughout the greater part of our history have recognized that this power is vested by the Constitution in the President. One major source of this power, of course, is his designation as Commander in Chief. Professor Quincy Wright, one of the nation's foremost commentators on international law, wrote some 50 years ago:

The powers of the Commander in Chief extend to the conduct of all military operations in time of peace and of war, thus embracing control of the disposition of troops, the direction of vessels of war and the planning and execution of campaigns, and are exclusive and independent of Congressional power.

Just why the Founding Fathers saw fit to confer this title on the President and to invest him with these powers, I have never quite been able to understand, but I have a growing feeling that with the recognized and infinite wisdom of the Founding Fathers they realized that a single man with these powers, who would not be disturbed by the politics of the moment, would

85. Javits, supra note 80, at 632, 634.
87. Quoted in id. at S 2528–29.
91. Wright, Validity of the Proposed Reservations to the Peace Treaty, 20 Colum. L. Rev. 121, 134 (1920).
use them more wisely than a Congress which is constantly looking toward
the political results. Though I first came to this thought without the benefit
of supporting writings, I have recently learned of other places where a similar
view is recorded.

In speaking of this grant of power, Hamilton wrote:

Of all the cares or concerns of government, the direction of war
most peculiarly demands those qualities which distinguish the exer­
cise of power by a single hand. The direction of war implies the
direction of the common strength; and the power of directing and
employing the common strength forms a usual and essential part in
the definition of executive authority.

Contrary to the position taken by my Senate colleague from New York,
Senator Jacob Javits, the Constitutional Convention was probably appalled
at the difficulties Washington had encountered at the hands of the Continental
Congress. Rather than desiring to perpetuate the experience of weakness
and division which the country had suffered under the early Congresses and
Articles of Confederation, I believe the Framers intended to infuse national
strength through this provision, so as to effectively “secure the Blessings of
Liberty to ourselves and our Posterity.”

In 1910, Dr. David Watson wrote, in his two-volume work on the Consti­
tution, that of all of the explanations of why the Constitution should make its
President Commander in Chief of the military and naval forces of the country,
none seems more reasonable than the fact that during the Revolution
Washington experienced great trouble and embarrassment resulting
from the failure of Congress to support him with firmness and dis­
patch. There was a want of directness in the management of affairs
during that period which was attributable to the absence of cen­
tralized authority to command. The members of the Convention

92. THE FEDERALIST, No. 73, at 409 (rev. ed. 1901) (with special introduction by Goldwyn­
Smith).

93. Professor John Norton Moore testified at the War Powers Hearings that he believes
“reliance on the experience under the Articles of Confederation seems a frail reed
for interpreting a Constitution promulgated in large measure as a result of dissatis­
faction with the experience under the Articles.” Senate War Powers Hearings, supra
note 12, at S 6498. The Articles were operative during at least 5 of the 8 years covered
by George Washington’s commission.

94. According to J. H. McIlvaine, writing in the Princeton Review for October 1881:
It was the extreme weakness of the Confederation which caused the war
of independence to drag its slow length along through seven dreary years....
The treaties which the Confederation had made with foreign powers, it was
forced to see violated and treated with contempt by its members; which
brought upon it distrust from its friends, and scorn from its enemies. It had
no standing among the nations of the world, because it had no power to
secure the faith of its national obligations.

Quoted in J. POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE
UNITED STATES 51–52 (1870).

95. U.S. CONST. preamble. It is instructive that Hamilton and Madison expressly rejected
as too weak the political model of the Germanic Empire in which the Diet possessed
the general power of making war. In any emergency, they warned, “military prepara­
tions must be preceded by so many tedious discussions ... that before the Diet can
settle the arrangements the enemy are in the field ....” THE FEDERALIST, No. 19,
supra note 92, at 97–98.
knew this and probably thought they could prevent its recurrence by making the President Commander-in-Chief of the Army and Navy. Doubtless, also, the Convention was influenced by precedents, of which there were many, running back for a long period.\footnote{Hughes, War Powers Under the Constitution, 85 Cent. L.J. 206, 209 (1917).}

Professor Clarence Berdahl, upon writing in 1922 his outstanding thesis on war powers of the Executive, observed:

The members of the Convention probably had not forgotten the trouble and embarrassment caused during the Revolution by congressional interference and the lack of a centralized control over the army. They were very likely influenced also by the precedents in the practice of European states, in former plans of union for the colonies, and in the recently established state constitutions.\footnote{Hughes, War Powers Under the Constitution, 85 Cent. L.J. 206, 209 (1917).}

Thus, not only did the Framers plan "a union which could fight with the strength of one people, under one government intrusted with the common defense,"\footnote{98} but in so doing they were undoubtedly influenced by political traditions known to them.\footnote{99}

Nor does the conferral of a broad power to wage a defensive war conflict with the design of the Founding Fathers to avoid establishing a "despicable monarch." Charles Evans Hughes wrote:

The prosecution of war demands in the highest degree the promptness, directness and unity of action in military operations which alone can proceed from the executive. This exclusive power to command the army and navy and thus direct and control campaigns exhibits not autocracy but democracy fighting effectively through its chosen instruments and in accordance with the established organic law.\footnote{99}

This recognized emphasis by the Framers on unity and single-mindedness of purpose in the new Government logically means the President must deploy...
and direct military forces free of control by Congress, and it has been so interpreted by several authorities. As early as 1862, William Whiting, one of the great lawyers of his time,101 compiled a work on the war powers of the President in which he declared:

Congress may effectually control the military power, by refusing to vote supplies, or to raise troops, and by impeachment of the President; but for the military movements and measures essential to overcome the enemy—for the general conduct of the war—the President is responsible to and controlled by no other department of government.102

Whiting's foresight103 led him to add that the Constitution "does not prescribe any territorial limits, within the United States, to which his military operations shall be restricted."104

Dean Pomeroy,105 a contemporary of Whiting, wrote in the 1870 edition of his textbook on constitutional law that he, too, rejected the idea that "the disposition and management of the land and naval forces would be in the hands of Congress . . . . " The policy of the Constitution is very different," Pomeroy instructs. "It was felt that active hostilities, under the control of a large deliberative body, would be feebly carried on, with uniform disastrous results."106 He said that the Legislature may "furnish the requisite supplies of money and materials" and "authorize the raising of men," but "all direct management of warlike operations, all planning and organizing of campaigns, all establishing of blockades, all direction of marches, sieges, battles, and the like, are as much beyond the jurisdiction of the legislature, as they are beyond that of any assemblage of private citizens."107 What of congressional authority to pass laws for executing all powers vested by the Constitution in the Government of the United States, or in any department or officer thereof? "But these measures," declares Pomeroy, "must be supplementary to, and in aid of, the separate and independent functions of the President as

101. It is said of Whiting that "[a]s a lawyer, he proved to be so thorough, industrious, and adroit in analysis of mastered cases that the old Common Pleas [in Massachusetts] was often termed Whiting's court." He was appointed special counsel of the United States War Department in November 1862, and became its solicitor from February 1863, until he resigned in April 1865. 21 H. STARR, DICTIONARY OF AMERICAN BIOGRAPHY 703 (1944).


103. Months before Lincoln's Emancipation Proclamation, Whiting argued that the President, as Commander in Chief, may emancipate the slaves of any belligerent section of the country, if such an act is necessary to weaken the enemy. Id. at 66-82.

104. Id. at 83.

105. Dr. John Norton Pomeroy was Dean of the University of New York Law School.

106. J. POMEROY, supra note 94, at 288–89. On other grounds, Madison indicates the Constitution intentionally removed the direction of the military forces from Congress because it is "particularly dangerous to give the keys of the Treasury and the command of the army into the same hands . . . . " THE FEDERALIST, No. 37, supra note 52, at 202.

commander-in-chief; they cannot interfere with, much less limit, his discretion in the exercise of those functions.¹⁰⁸ Pomeroy expands on this view by telling us Congress "may determine how many men shall be enlisted in each branch of the service, or what and how many armed vessels shall be constructed." As Congress makes all appropriations, it may decide "what forts shall be erected, and their cost; what ships built, their character and cost; what kind of arms purchased or manufactured, and the cost." The President, on the other hand, "may make all dispositions of troops and officers, stationing them now at this post, now at that; he may send out naval vessels to such parts of the world as he pleases; he may distribute the arms, ammunition, and supplies in such quantities and at such arsenals and depositories as he deems best . . . .¹⁰⁹ When actual hostilities have commenced, the President "wages war, Congress does not." He "possesses the sole authority and is clothed with the sole responsibility" of conducting all warlike movements, whether at home or abroad.¹¹⁰

This untrammeled view of the President's freedom to deploy troops and equipment wherever and whenever he chooses is a consistent theme in commentaries from both the colleges and the courts.¹¹¹ Berdahl squarely takes up the issue:

Altho there has been some contention that Congress, by virtue of its power to declare war and to provide for the support of the armed forces, is a superior body, and the President, as Commander-in-Chief, is "but the Executive arm . . . in every detail and particular, subject to the commands of the lawmaking power," practically all authorities agree that the President, as Commander-in-Chief, occupies an entirely independent position, having powers that are exclusively his, subject to no restriction or control by either the legislative or judicial departments.¹¹²

¹⁰⁸. Id.
¹⁰⁹. Id. at 472.
¹¹⁰. Id. at 473.
¹¹¹. Watson believed:

The power is vested in the President to dispose of or arrange the component-parts of the Army and Navy at his pleasure . . . . While Congress can make rules for the Army and Navy, it cannot interfere with the President's power as commander of such forces.

D. Watson, supra note 96, at 914. Speaking of the President's duties for the protection of our citizens and national interests, Wright declares:

by reduction of the army and navy, or refusal of supplies, Congress might seriously impair the de facto power of the President to perform these duties, but it can not limit his legal power as Commander-in-Chief to employ the means at his disposal for these purposes.

Q. Wright, The Control of American Foreign Relations 307 n.93 (1922). Also of interest is the remark by former President William H. Taft that it "is clear that Congress may not usurp the functions of the Executive . . . by forbidding or directing the movements of the army and navy." Taft, The Boundaries Between The Executive, the Legislative and the Judicial Branches of the Government, 25 Yale L.J. 600, 609 (1916).

¹¹². C. Berdahl, supra note 26, at 116-17.
Anticipating legislative proposals of the kind embodied in today's end-the-war amendments, Berdahl concludes:

Just as the President decides when and where troops shall be employed in time of war, so he alone likewise determines how the forces shall be used, for what purposes, the manner and extent of their participation in campaigns, and the time of their withdrawal.113

The position of these writers has been fortified by judicial opinion. Thus, in explaining that it is for the President, as Commander in Chief, to direct the campaigns of the army "wherever he may think they should be carried on,"114 Charles Evans Hughes cited Fleming v. Page, where the Supreme Court said:

As Commander in Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy.116

Likewise, in 1866, four concurring members of the Supreme Court declared that "Congress cannot direct the conduct of campaigns . . ."117 Later, the Supreme Court affirmed a holding in which the Court of Claims had said that "Congress cannot in the disguise of 'rules for the government' of the Army impair the authority of the President as commander in chief."118 And in United States v. Sweeny, the Court said that the Constitution has conferred upon the President "such supreme and undivided command as would be necessary to the prosecution of a successful war."119

But, as broad and unrestricted as is the President's role of Commander in Chief, it does not exhaust his authority in the field of national defense. Another great power vested in the President is his conduct of the nation's foreign policy. The Constitution provides that the President shall make treaties and appoint ambassadors with the advice and consent of the Senate.120 But the Constitution provides that the President alone receives ambassadors,121 holds all the Executive power of a sovereign nation.122 From this, it is clear the President bears "primary responsibility for the conduct of our foreign affairs."123 It was Alexander Hamilton who first argued that the President's

113. Id. at 122.
114. Hughes, supra note 98, at 209.
115. 50 U.S. (9 How.) 603 (1850).
116. Id. at 615.
117. Ex parte Milligan, 71 U.S. (4 Wall.) 2, 139 (1866).
119. 157 U.S. 281, 284 (1895).
120. U.S. Const. art. II, § 2.
121. Id. § 3.
122. Id. § 1. Also see remark by Solicitor General Erwin Griswold that the grant of Executive power "is not a merely passive grant." 117 Cong. Rec. S 12,968 (daily ed. Aug. 3, 1971).
role in international affairs is a dynamic one, which "may, in its consequences, affect the exercise of the power of the Legislature to declare war." 114

The President's power to initiate and formulate the foreign policies of our government entirely on his own authority, has been conclusively established by the Supreme Court. 115 The Court's holding is squarely aligned with the accepted tradition under which the President can effectively commit Congress and the country to the course he has set. Pomeroy says:

The President may, without any possibility of hindrance from the legislature, so conduct the foreign intercourse, the diplomatic negotiations with other governments, as to force a war, as to compel another nation to take the initiative, and that step once taken, the challenge cannot be refused. 116

Berdahl, in his famed thesis, summarizes the authorities in 1920 as agreeing that

the President, through his control of diplomatic intercourse, holds in his keeping the peace and safety of the United States, that he may initiate such diplomatic policies and so conduct diplomatic negotiations as to force the country into a war, "without any possibility of hindrance from Congress or the Senate." 117

Professor Westel Willoughby has also observed that the President's control over foreign relations

makes it possible for him to bring about a situation in which, as a practical proposition, there is little option left to Congress as to whether it will or will not declare war or recognize a state of war as existing. 118

Willoughby did not mean to imply that this result was improper and could be checked by Congress. He wrote that the power of the President to send troops outside the country "as a means of preserving or advancing the foreign

the President's "constitutional primacy in the field of foreign affairs." Id. at 758 (Harlan, J., dissenting, with whom Burger, C.J., and Blackmun, J., joined).
124. E. Corwin, supra note 49, at 178-79. In other words, says Corwin, the President "is consequently able to confront the other departments, and Congress in particular, with fait accompli [sic] at will ...." Id. at 180.
125. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 309-50 (1936), in which the Supreme Court held that the power of the President in the field of international relations is "delicate, plenary and exclusive" and "does not require as a basis for its exercise an act of Congress ...." Pertinent here are comments by then Professor Woodrow Wilson about the Chief Executive's "control, which is very absolute, of the foreign relations of the nation." According to Wilson, "The initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely." W. Wilson, Constitutional Government in the United States 77 (1911) (lectures first printed in 1911).
127. C. Berdahl, supra note 26, at 31.
128. J. W. Willoughby, The Constitutional Law of the United States 1558 (2d ed. 1929). Even the practice of recognition, an exclusive act of the President, can, if premature, be treated as cause for war under international law. See Berdahl, supra note 26, at 32. Justice Joseph Story refers to the authority of the President to receive foreign envoys, with its implicit power of recognition, as "pregnant with consequences, often involving the question of peace and war." 3 J. Story, Commentaries on the Constitution of the United States § 1561, at 418 (1833).
interests or relations of the United States" is a "discretionary right constitutionally vested in him, and, therefore, not subject to congressional control."121

An additional source of power bearing on this inquiry lies in the President's duty, and right, to execute the laws. The Supreme Court has announced that this power includes enforcement of

the rights, duties and obligations growing out of the constitution itself, our international relations, and all the protection implied by

the nature of the government under the constitution . . . .122

The reach of this power, too, continues even as it touches other grants made by the Constitution. Corwin asserts that, by virtue of his power to base action directly on his own reading of international law (which today includes some 42 mutual defense treaties),123

the President has been able to gather to himself powers with respect to warraking that ill accord with the specific delegation in the Constitution of the war-declaring power to Congress.124

Corwin thereby acknowledges that this power is vested in the President, notwithstanding its impact upon the separate war power of Congress.125

The courts have upheld the power of the President to begin and continue hostilities without a declaration of war. In approving President Lincoln's blockade of the Confederacy, the Supreme Court held that when

a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority.126

From this, Professor Schwartz believes:

The language of the high Court in the Prize Cases is broad enough to empower the President to do much more than merely parry a blow already struck against the nation. Properly construed, in truth, it constitutes juristic justification of the many instances in our history (ranging from Jefferson's dispatch of a naval squadron to the Barbary Coast to the 1962 blockade of Cuba) in which the President has ordered belligerent measures abroad without a state of war having been declared by Congress.127

The principle of national self-defense thus ratifies each of the 192 undeclared wars which I have cited above.128 The power of the President to wage these

129. W. WILLOUGHBY, supra note 128, at 1567.
130. In re Neagle, 135 U.S. 1, 64 (1890). See also Wright, supra note 91, at 134-35.
   See the comment by Professor Corwin that "the President may also make himself the direct administrator of the international rights and duties of the United States, or of what are adjudged by him to be such, without awaiting action either by the treaty-making power or by Congress, or by the courts." E. CORWIN, supra note 49, at 196.
133. Id.
136. See page 425 supra.
actions without a formal declaration, and generally without any prior approval of Congress, is not only supported by the doctrine of The Prize Cases," but is the natural extension of the concept of defensive wars contemplated by the Founding Fathers. When the Constitutional Convention altered a clause giving Congress the power "to make war" by replacing it with the power "to declare war," there was unquestionably a purpose of "leaving to the Executive the power to repel sudden attacks." How much else the Framers meant to leave with the President is not as definite, but it is at least significant that they had a difference in mind between the two terms and left the making of war with the President.

It is my strong belief that the Framers intentionally painted with a broad brush. For the Founding Fathers clearly understood that "it is impossible to foresee or define the extent and variety of national exigencies, or the corresponding extent and variety of the means which may be necessary to satisfy them." From this I conclude that, should the Fathers be set down by the Divine Hand in our modern world, they would not tolerate rigid legislative policy restrictions on the authority needed by the Executive in defending our nation and our people against all possible foreign threats.

Other judicial precedents bear out the power of the Executive to use such force as is necessary for defensive purposes. Justice Nelson, sitting as a circuit justice, held that the President's duty to execute the laws includes a duty to protect citizens abroad. The Supreme Court has carried this concept even further by declaring that a citizen abroad is entitled "to demand the care and protection of the Federal government over his life, liberty, and property." The right of intervention for the protection of "the lives, liberty, and property" of citizens abroad is firmly established by international law as well. Of course, the right of a state to secure its own self-preservation is also cemented under international law.

137. 67 U.S. (2 Black) 635 (1862).
139. "Mr. Madison and Mr. Gerry moved to insert 'declare,' striking out 'make' war; leaving to the Executive the power to repel sudden attacks." Id. at 553.
140. But compare the view of my distinguished friend from Virginia that "the President's only role in the war-making process was, as Commander-in-Chief, to direct operations as the executive arm of the Congress." Spong, supra note 81, at 4-5.
141. The Federalist, No. 23, supra note 92, at 119.
142. In the words of Hamilton, "The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed." Id. at 119-20.
143. Durand v. Hollins, 8 F. Cas 111 (No. 4186) (C.C.S.D.N.Y. 1860) (Justice Nelson had been on the Supreme Court since 1845).
145. See J. CLARK, RIGHT TO PROTECT CITIZENS IN FOREIGN COUNTRIES BY LANDING FORCES 23 (3d rev. ed. 1934).
The forging of a lengthy chain of historical ventures by Presidents, set against a backdrop of national weakness that the Framers, as practical men, were determined to reverse, persuades me that Presidents have acted constitutionally, and in accordance with a great American tradition, when they have deployed forces outside the United States in defense of our national interests. I further believe the right of the President to take military action

147. In the words of Professor Henry Monaghan, "A practice so deeply embedded in our governmental structure should be treated as decisive of the Constitutional issue." Monaghan, Presidential War-Making, 56 BOSTON U.L. REV. 31 (1970).

In contrast is the view of Francis D. Wormuth, who makes the guess that of all these military hostilities "eighty-two were undertaken by a subordinate officer on the spot and without orders from superiors." From this, he indicates the significance of the entire list by claiming the argument must be that these 82 precedents "hold that every naval and army captain also has the legal right to initiate war without the authorization of either Congress or the President." SATURDAY REVIEW, Oct. 2, 1971, at 29.

Nonsense! All of the precedents set forth herein were undertaken pursuant to known Executive policies. No incidents are cited which were later repudiated or disavowed. The military officers "on the spot" were acting in each of the 192 hostilities to carry out a clear Presidential policy, whether it be a design to suppress piracy or the slave trade, or a commitment to protect United States citizens and property abroad, or an avowed Presidential foreign policy objective, such as the Monroe Doctrine or an executive interpretation of our treaty rights.

In illustration of how routine this practice is, I might refer to a letter by Secretary of State Cass in August 1858, in which he advised the Secretary of Navy, "I have the honor also to suggest the importance of our squadron being directed to traverse the whole of the Levant, showing itself along the coasts of Egypt, Palestina, Syria, and of Asia Minor for the purpose of affording all possible protection to the persons and property of our citizens." 69 CONG. REC. 6950 (1928). Another example is the letter by Secretary of State Charles E. Hughes, on March 15, 1922, in which he informed the Chairman of the House Military Affairs Committee that the practice of landing troops in China for over 20 years was conceded to the United States by the final protocol for the settlement of the disturbances in China of 1900. 62 CONG. REC. 4300 (1922).

Finally, since it is the President who is Commander in Chief and bearer of all the executive power under the Constitution, it is the President who is thereby immediately responsible for the command of forces and the conduct of campaigns. In practice, the President acts through the Executive departments of Government and they, in turn, act through subordinate officers. But their acts are in legal contemplation the acts of the President himself, unless disavowed. See United States v. Eliason, 41 U.S. (16 Pet.) 291, 301-02 (1842); Wilcox v. Jackson, 38 U.S. (13 Pet) 498, 512 (1839); C. BERDAHL, supra note 26, at 21; D. WATSON, supra note 96, at 914.

148. Summarizing his position after more than 50 years of study, Professor Quincy Wright declared: "I conclude that the Constitution and practice under it have given the President, as Commander-in-Chief and conductor of foreign policy, legal authority to send the armed forces abroad; to recognize foreign states, governments, belligerency, and aggression against the United States or a foreign state; to conduct foreign policy in a way to invite foreign hostilities; and even to make commitments which may require the future use of force. By the exercise of these powers he may nullify the theoretically exclusive power of Congress to declare war."


Another eminent authority summed up his own half-century of study by finding that the practice of the President to use military power at his own will "had developed into an undefined power—almost unchallenged from the first and occasionally sanctified judicially—to employ without Congressional authorization the armed forces in the protection of American rights and interests abroad whenever necessary." Corwin, Who Has the Power to Make War?, N.Y. Times, July 31, 1949, at 14. See also pages 425-26 supra.
at any time he feels danger for the country or its freedoms or, stretching a point, its position in the world, cannot be restrained by policy directives from Congress. 149

Congress indeed holds an impressive share of the national war powers. Congress can set the size of the various branches of the Armed Services, a step which the 92d Congress has already taken. 150 It can end the draft, a move I have advocated since 1964. 151 It can deny or cut appropriations for tanks, aircraft, submarines, carriers, ABM's, and all the other military-related hardware that constitutes the country's defense arsenal. 152 It can turn down an Administration's request for funds to equip and train the military units of

149. See pages 435-43 supra. The 100th Justice of the Supreme Court has said that (1) there is no prohibition in the Constitution which keeps the President from initiating war without the declaration of Congress, and (2) no statute could "prevent the President from exercising his traditional powers as Commander in Chief, which do include under certain circumstances the commitment of armed forces to hostilities." Testimony of William H. Rehnquist, Hearings on Congress, the President, and the War Powers Before the Subcomm. on National Security Policy and Scientific Developments of the House Comm. on Foreign Affairs, 91st Cong., 2d Sess., 228-29, 232 (1970).

My personal view is strengthened by the almost unanimous advice from some 40 authorities, of all political shadings, whom I have consulted on this subject. For example, Dean Acheson wrote to me about legislation which would limit the President's use of forces to 30 days in emergency situations unless Congress specifically extends his authority. He said:

Any attempt to spell out procedural requirements and limitations on executive power will tend to make rigid that which must be flexible. If the President and the Congress are to assume attitudes of hostility, the nation in this modern world will be subject to grave perils. The separation of powers is not based upon the premise of their fundamental hostility. Criticism and restraint are contemplated in the workings of the system, and can be accomplished. The present legislative proposals do not seem to me to provide for this, but, instead, by setting up a series of rigid rules, to limit the powers of the President beyond safety and to give the Congress, by inaction, what the Constitution never contemplated, a veto upon executive action.

Letter from Dean Acheson to Barry M. Goldwater, May 18, 1971 (unpublished letter in author's personal files). Another former Secretary of State said:

[W]e should not clutter up our Constitution with detailed directives to the President and to the Congress where we cannot know the future circumstances in which such directives will have to be followed.

Letter from Dean Rusk to Barry M. Goldwater, May 11, 1971 (unpublished letter in author's personal files). Thus, Dean Rusk writes of his opposition to war powers controls either in the form of legislation or an amendment to the Constitution.

150. See Congressional Reference Service, Regulating the Size of the Armed Forces Under Selective Service Law, 117 CONG. REC. S 9590-91 (daily ed. June 21, 1971). According to Senator Stennis, 1971 is the first time Congress has ever set numerical strength levels on the total size of the regular forces, including both volunteers and inductees, in the Selective Service Act. See id. at S 9569 (remarks of Senator Stennis).

151. Prompt repeal of the compulsory draft and its replacement with an all-volunteer military were among the pledges included in my 1964 platform as the presidential candidate of the Republican Party.

152. It is a little-noticed fact that the 1972 defense budget is the smallest relative military budget in a quarter century. Defense spending dropped to 34% of total federal spending in 1972, falling below human resource spending (42%) for the first time in over 20 years. OFFICE OF MANAGEMENT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, THE U.S. BUDGET IN BRIEF, FISCAL YEAR 1972, at 5 (1971).
allied foreign countries.\textsuperscript{154} Congress can choose not to increase taxes, thereby placing tremendous political pressure on a President whose own instincts for international adventurism must be weighed against the risks of bucking a public that wants butter, not guns, and of assuming the stigma of a grossly unbalanced budget. Congress also can repeal or limit the numerous delegations of emergency powers that have been granted the President over wages and prices,\textsuperscript{155} the exportation, manufacture, or distribution of vital or rare materials,\textsuperscript{156} the licensing of trade with foreign countries,\textsuperscript{157} and the multitude of other economic elements that bear on the defense strength of the United States.\textsuperscript{158} In addition, Members of Congress enjoy a prominent public forum from which they can go directly to the American people with their criticisms of executive policies.\textsuperscript{159}

In short, Congress has control over the size and strength of the military and economic machinery which the President may use for making war.\textsuperscript{160} A

\begin{enumerate}
\item See, e.g., Trading With the Enemy Act of 1917, id. §§ 1–44, relative to the licensing of transactions with foreign enemies or allies of enemies during any period of national emergency declared by the President; The Export Administration Act of 1969, id. §§ 2401–13.
\item We can probably see the effect of a changing public mood in the Vietnamization policy of the current Administration, under which 480,000 troops will have been withdrawn from Indochina in three years. The State of the Union Address, President Richard M. Nixon, 118 CONGR. REC. H 145, H 149 (daily ed. Jan. 20, 1972).
\item The active role outlined for Congress in the preceding paragraph would, I believe, conform foursquare with the doctrine announced by the United States Court of Appeals for the Second Circuit in Orlando v. Laird, 443 F.2d 1039 (2d Cir. 1971), cert. denied, 92 S. Ct. 94 (1971). The court held that the power of Congress to declare war calls for "some mutual participation between the Congress and the President...with action by the Congress sufficient to authorize or ratify the military activity at issue..." 443 F.2d at 1043 (emphasis original). The court expressly indicated that congressional collaboration can follow the initiation of a hostility, rather than precede it, and can take the form of military appropriations as well as extensions of the draft. In addition, the court suggests that area resolutions and treaties, such as the Tonkin Gulf Resolution, Pub. L. No. 88–408, 78 Stat. 384 (1964), terminated, Foreign Military Sales Act of 1971, Pub. L. No. 91–672, § 12, 84 Stat. 2055, and the SEATO Treaty, Southeast Asia Collective Defense Treaty, Sept. 8, 1954, [1955] 1 U.S.T. 81, T.I.A.S. No. 3170, are sufficient in authorizing the prosecution of war even though expressed in broad language.

Needless to say, there is probably some resolution or treaty around which would fit almost any military contingency. And no fighting is going to continue for long without a President including funds in his annual or supplemental budget request for its support, at which point Congress will either collaborate by voting the money or force a change in policy by cutting or denying defense-oriented funds.
\end{enumerate}
President leading a nation with three million men under arms can, if he chooses, involve the country in considerably more commitments than a Commander in Chief who heads an armed force of two million members. A President strengthened by a $90 billion defense budget can deploy vastly more arms and vessels around the world than a President who must carefully ration out the means available under a $60 billion defense appropriation.

But once Congress establishes the military forces and provides them with equipment and supplies, it is the President who determines the policies under which those forces shall be stationed, transported, and committed in furtherance of the national defense. Once Congress has created a military of, for example, 2½ million members, Congress possesses no power to tell the President how many of those servicemen shall be stationed in Europe, or how many in Indochina, or when these troops shall be withdrawn from certain areas overseas, or for how long they can be employed in hostilities. These are policy decisions which have been vested by the Constitution in the President, free of the direct supervision and control of the legislature. I repeat, Congress cannot dictate these kinds of military policy rules to the President and, in full accordance with the Constitution, he need not follow such rules should Congress pass them.

The uniform refusal by Congress, as a collective body, ever to block or limit even one of the nearly 200 Presidential-initiated hostilities which have occurred to date, strongly suggests the construction which the Founding Fathers intended for the constitutional provisions allotting the war powers. For some legislators to say that this long-continued practice may now be overturned by a sudden change of interpretation, demands that the sponsors of legislative command centers should bear the burden of proving their case by the most clear and cogent evidence.

The mere repetition of statements that the power to declare war carries with it the sole power to commence war, does not make it so. The fact that "[n]o Supreme Court decision has restrained the conduct of presidentially-authorized hostilities," holds far more meaning for me than all of the

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160. See pages 426-32 supra.

Though three early cases touching the French naval war are heavily relied upon by the advocates of war powers controls, these cases were decided after hostilities had ended. Thus, the issue of curbing the President's conduct of war during actual fighting was not presented. See Bas v. Tingy, 4 U.S. (4 Dall.) 37 (1800); Talbot v. Seaman, 5 U.S. (1 Cranch) 1 (1801); Little v. Barreme, 6 U.S. (2 Cranch) 170 (1804). Furthermore, the cases involved "an issue squarely within a specific grant of authority to Congress. That is, the power 'to make Rules concerning Captures on Land and Water.'" Testimony of Prof. J. Moore, 117 Cong. Rec. S 6469 (daily ed. May 10, 1971). See U.S. Const. art. I, § 8.

Although Schwartz at one point indicates Little may have broad implications, he sharply qualifies his position elsewhere by adding: "A Constitution which did not permit the Commander in Chief to order belligerent acts whenever they are deemed necessary to defend the interests of the nation, would be less an instrument intended
anguished pleas in the world that Congress must prevent another Vietnam.\textsuperscript{162}

In the first place, Congress was involved up to its ears each step of the way throughout the expansion of our participation in Indochina.\textsuperscript{163} Time and again Congress put its votes on the side of more troops and more funds.\textsuperscript{164} Secondly, the Constitution cannot be changed out of emotional whims, no matter how morally pious they may be. Thirdly, the proposals to define when, where, and for how long the President can employ United States forces abroad are shot through with terrible problems that are even more ominous than the ones they seek to forestall.\textsuperscript{165

to endure through the ages, than a suicide pact." He also writes: "If one thing is clear under the Constitution, it is that the actual use of the armed forces by the Commander in Chief is not subject to any legal control." B. Schwartz, supra note 50, at 168, 205, 217.

162. A prime conception motivating the introduction of war powers legislation seems to be an assumption that it is the President who has, on his own, drawn this nation into an escalation of the Vietnam hostilities. For example, Senator Javits comments that this legislation "may, in retrospect, be viewed as the most constructive legislative by-product of our Nation's tragic Vietnam experience." 117 Cong. Rec. S 20,627 (daily ed. Dec. 6, 1971) (remarks of Senator Javits).


In the words of the United States Court of Appeals for the Second Circuit: "The Congress and the Executive have taken mutual and joint action in the prosecution and support of military operations in Southeast Asia from the beginning of those operations." Orlando v. Laird, 443 F.2d 1039 (2d Cir. 1971), cert. denied, 92 S. Ct. 94 (1971).


165. For example, Secretary of State William P. Rogers cautions:

To circumscribe presidential ability to act in emergency situations—or even to appear to weaken it—would run the grave risk of miscalculation by a potential enemy regarding the ability of the United States to act in a crisis. This might embolden such a nation to provoke crises or take other actions which undermine international peace and security.

Testimony of Secretary of State William P. Rogers, Senate War Powers Hearings, supra note 12, at 57199 (daily ed. May 18, 1971). Professor James MacGregory Burns agrees. He has testified that artificial restrictions on Executive discretion "may not lead to peace, but to war, as foreign adversaries estimate that the United States will not respond to a threat to world peace because of legislative restrictions on the Executive." Hearings on Congress, the President, and the War Powers, Before the Subcomm. on National Security Policy and Scientific Developments of the House Comm. on Foreign Affairs, 91st Cong., 2d Sess. 81-82 (1970) (testimony of Dr. Burns).

I have spoken of my own fears about war powers legislation on the grounds it will place all our treaty obligations in a state of permanent doubt, prevent the United States from responding in even a limited way to protect the existence of friendly and strategically important countries such as Israel, with which we have no defense commitment specifically authorized by statute; and conceivably might drag the President into an unwanted expansion of hostilities, the presumption of the legislation being that the President has no power to contravene congressional direc-
It is not easy for me to assert that the President has this terrific power, but I must. I wish it were possible for me to join those dreamers who think we have no problems in this world. But I am old enough to have lived through this same thing before. It is not difficult at all for me to transport myself back in time to the 1920's and the 1930's when, as a young man, I can remember this country as an isolated country and a country being called a "Fortress America." I can remember when our troops drilled with wooden guns and paper tanks, when we did not have enough airplanes in our Air Corps even to hold maneuvers, and when our Navy was weak—all because we were going through the very same kind of emotional trauma we see expressed throughout our country today.

We have an understandable desire to be at peace. Lord knows, I do not want another war. I do not want my grandchildren to suffer war, but neither do I want my children or grandchildren, or the children of any American, to be subjected to the dangerous, serious threat that our country was faced with in the late 1930's when we knew we were going to have to go to war and we knew that we were not equipped.\footnote{Mr. George Ball, who has served his country well on five separate occasions in the executive branch, testified during the war powers hearings that he has been around long enough to have seen other legislation which was supposed to assure that the United States would not be drawn into another major conflict. He recalls that by passing a series of neutrality laws in the 1930's, Congress believed it would forestall a repetition of World War I. And yet, Mr. Ball points out that this very legislation might have been instrumental in leading to war: We all remember the somber history of these Congressional acts, and what an impediment they imposed to participation by the United States in the timorous politics of Europe which paved the way for Hitler's conquests and another world catastrophe—a catastrophe which, as recent disclosures have made quite clear, could have very probably been averted if the United States had lent a steadying hand to reinforce the will of the flabby statesmen then guiding European destinies.\textit{Testimony of the Honorable George S. Ball, Senate War Powers Hearings, supra note 12, at S 12,621 (daily ed. July 30, 1971).}}

When I rise in the Senate to support a new defensive weapons system or when I uphold in this\textit{article} the concept of sufficient flexibility in Executive powers to defend America's freedoms, I do not have any degree of satisfaction, unless that satisfaction might come to me in my older years as I sit on my hill in the desert and think that possibly the warning a few of us are trying to give the American people was heeded and that I could sit in peace on that hill and talk with my grandchildren because of it.
EXHIBIT II

APPENDIX

A. CHRONOLOGICAL LIST OF U.S. MILITARY HOSTILITIES ABROAD WITHOUT A DECLARATION OF WAR, 1798-1792

1798-1800: Naval War with France

When John Adams became President in 1797, he faced the serious problem of strained relations between France and the United States, in which France had made it a practice to seize American merchant ships and to manumiss their crews. Adams first attempted to negotiate a settlement, but, when the French demanded exorbitant bribes and loans, his envoys rejected the proposal and departed.

Adams, thereupon, asked Congress for the power to arm merchant ships and take other defensive measures. Congress responded by creating a Navy Department, voting appropriations for new warships, and authorizing the enlistment of a "Provisional Army" for the duration of the emergency. In July, 1798, the French treaties and conventions were abrogated.

The result was a "quasi-war," during which neither country declared war. The American Navy attacked only French warships, and privateers and fought primarily for the protection of commerce. Some nine French ships were captured during this naval war. On May 20, 1799 a convention was agreed to and peace was achieved. See, e.

1800: West Indies

On April 1, U.S. Marines participated in the action between the U.S. schooner Enterprise and a Spanish man-of-war brig in the West Indies. WAMS, 2, 93.

1804-1805: War with Tripoli

During the early years of the Republic, the United States, following the practice of several European nations, paid tribute to North African pirates. Shortly after Jefferson became President, the Pasha of Tripoli, dissatisfied with the apportionment of tribute, declared war on the United States (May 2001). Jefferson thereupon sent warships to the Mediterranean. After naval actions and landings under Commodore Preble, an inconclusive treaty of peace with Tripoli was signed in 1805. Congress passed various enabling acts during the conflict but never declared war. See, e.

*The list includes only actual battles, landings, or evacuations in foreign countries. Ships or stationing of American presence other than returning an advanced state of readiness are not included, except for seven or eight instances when the risk of war was unusually grave. No military operations known to have been subsequently disavowed or repudiated have been included. The list was prepared with the direction of U.S. Senator Barry Goldwater and is published with his consent.*
1806: Mexico (Spanish territory).

Captain Z. M. Pike, with a platoon of troops and on the orders of General James Wilkinson, invaded Spanish territory at the headwaters of the Rio Grande, apparently on a secret mission. State, 16.

1806-1810: Gulf of Mexico.

American gunboats operated from New Orleans against Spanish and French privateers. State, 16.

1810: West Florida (Spanish territory).

Governor Claiborne of Louisiana, on orders from the President, occupied with troops disputed territory east of the Mississippi as far as the Pearl River. No armed clash occurred. State, 16.

1813: West Florida (Spanish territory).

On authority granted by Congress, General Wilkinson seized Mobile Bay with 600 soldiers; a small Spanish garrison gave way without fighting. State, 16.

1813-1814: Marquesas Islands, South Pacific (claimed by Spain).

U. S. Marines built a fort on one of the islands to protect three captured prize ships. State, 16.

1814: Caribbean Area.

There were repeated engagements between American ships and pirates both ashore and off shore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. In 1822, Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies. The United States sank or captured 65 vessels. Marine detachments participated in at least 14 of these actions. State, 16.

1814: Second Barbary War (Algiers).

In 1812 an Algerian naval squadron operated against American shipping in the Mediterranean. In one attack on American merchantmen was captured and its crew imprisoned. In March, 1812, Congress passed an act that authorized the use of armed vessels "as may be judged requisite by the President" to provide effective protection to American commerce in the Atlantic and the Mediterranean. A naval squadron of 10 vessels under Commodore Stephen Decatur attacked Algiers, compelling the Bey to negotiate a treaty. Decatur also demonstrated at Tunis and Tripoli. All three states were forced to pay for losses to American shipping, and the threats and tribute terminated. State, 5.
1816-1818: Spanish Florida.

During the "First Seminole War," U.S. forces invaded Spanish Florida on two occasions. In the first action, they destroyed a Spanish fort harboring raiders who had made forays into United States territory. In the second, Generals Jackson and Gaines attacked hostile Seminole Indians. In the process, United States forces attacked and occupied Spanish posts believed to serve as havens by the hostiles. President Monroe assumed responsibility for these acts. Moore, 403-406.

1817: Amelia Island (Spanish Territory).

Under orders from President Monroe, U.S. forces landed and expelled a group of smugglers and pirates. Moore, 406-408.

1817: Columbia River.

The U.S.S. Ontario landed at the Columbia River and in August took possession. Russia and Spain asserted claims to the area. Rogers, 96.

1820: West Africa.

Marines participated in the capture of seven slave schooners by the U.S. corvette Okeene off Cape Mount and the Gallinas River on the west coast of Africa during the period from April 5 through 12. USMC, I, 64.

1820-1822: West Coast of South America.

Marines were aboard three of the U.S. ships stationed off the west coast of South America from 1820 until May, 1822, to protect American commerce during the revolt against Spain. USMC, I, 65.

1822: Cuba (Spanish Territory).

U.S. naval forces landed on the northwestern coast of Cuba and burned a pirate station. State, 17.

1823: Cuba (Spanish Territory).

Between April and October naval forces made a number of landings in pursuit of pirates, apparently incident to Congressional authorization which became operative in 1822. State, 17.

1824: Cuba (Spanish Territory).

In October, the U.S.S. Purpore landed sailors to pursue pirates during a cruise authorized by Congress. State, 17.

1825: Cuba (Spanish Territory).

In March, British and American forces landed on two offshore Cuban islands to capture pirates who were based there. The action appears to be incident to Congressional authority. State, 17.
1827: Greece.

Apparently acting pursuant to legislation, in October and November, United States forces from the U.S.S. Warren and the U.S. schooner Porpoise engaged in seven actions against pirate vessels off Greece and made landings on three Greek Islands. State, 17.

1828: West Indies.

In December, incident to legislation, Marines participated in the capture of the Argentinean privateer Federal by the U.S. sloop Eric at St. Bartholomew Island, W.I. USMC, 11, 67.

1830: Haiti.

On June 5, marines participated in the capture of the slave brig Fenix by the U.S. schooner Grampus off Cape Haitien, Haiti. USMC, 11, 67.

1831-1832: Falkland Islands (Argentina).

American forces under Captain Duncan of the U.S.S. Lexington landed to investigate the capture of three American sailing vessels. The Americans succeeded in releasing the vessels and their crews and dispersing the Argentine colonists. State, 17.

1832: Sumatra.

A force of 250 men from the U.S.S. Potomac landed to storm a fort and punish natives of a town for an attack on American shipping and the murder of crew members. State, 18.

1833: Argentina.

Between October 31 and November 15, at the request of American residents of Buenos Aires, a force of 43 marines and sailors landed from the U.S.S. Lexington to protect American lives and property during an insurrection. State, 18.

1835: Samoan Islands.

On October 11, eighty marines and sailors burned the principal village on the island to avenge harsh treatment meted out to American seamen. Paullin, 729.
1835-1836: Peru.
Marines from the U.S.S. Brandywine landed at various times at Callao and Lima to protect American lives and property during a revolt, and to protect the American Consulate at Lima. State, 18.

1837: Mexico.
On April 16, marines joined in the capture of a Mexican brig-of-war by the U.S.S. Natchez off Bracc de Santiago for illegal seizure of two American merchantmen. USMC, I, 70.

1839: Sumatra.
In January, American forces from the U.S. sloop John Adams and the U.S. frigate Columbia landed at Mukie, Sumatra, to protect American lives and property and to punish natives of two towns for attacking American ships. USMC, I, 70.

1840: Fiji Islands.
American forces totaling 70 officers and men, landed on July 12 and 25 to punish natives of two towns for attacking American exploring and surveying parties. State, 18.

1841: Samoa Islands.
On February 25, an American force of 70 marines and seamen from the U.S.S. Peacock landed to avenge the murder of a seaman. They burned three native villages. USMC, I, 71.

1841: Diamond Island (Kingsmill Group, Pacific Ocean).
On April 6, marines from the U.S.S. Peacock landed and burned two towns to avenge the murder of a seaman by natives. State, 18.

1842: China.
In June and July, a clash between Americans and Chinese at the Canton trading post led to the landing of 60 sailors and marines from the H. Jone. Paullin, 1095-1096.

1843: West Africa.
In November and December, four U.S. vessels from Commodore Perry's squadron demonstrated and landed various parties (one of 200 marines and seamen) to discourage piracy and the slave trade along
the Ivory Coast and to punish attacks made by the natives on American seamen and shipping. In the process, they burned villages and killed a local ruler. The actions appear to have been pursuant to the Treaty of August 9, 1842, with Great Britain relative to the suppression of the slave trade. State, 16.

1844: Mexico.

President Tyler deployed our forces to protect Texas against Mexico, anticipating Senate approval of a treaty of annexation, which was rejected later in his term. Corwin, 245.

1844: China.

On June 18, Marines from the U.S. sloop St. Louis went ashore at Canton, China, to protect American lives. USMC, I, 72.

1845: African coast.

On November 30, Marines joined in the capture of the slave bark *Piga* by the U.S. sloop Yorktown off Kahenda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 72.

1846: Mexico.

President Polk ordered General Scott to occupy disputed territory months preceding a declaration of war. Our troops engaged in battle when Mexican forces entered the area between the Nueces and Rio Grande Rivers. The fighting occurred three days before Congress acted. U.S., 378.

1849: Smyrna (Now Izmir, Turkey).

In July, the U.S.S. St. Louis gained the release of an American seized by Austrian officials. State, 18.

1850: African coast.

On June 6, Marines joined in capturing a slave ship by the U.S. brig Perry off Luanda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 77.

1851: Turkey.

After a massacre of foreigners (including Americans) at Jaffa, the U.S. Mediterranean Squadron was ordered to demonstrate along the Turkish coast. Apparently, no shots were fired, but the display amounted to compulsion. State, 13.
The U.S.S. Dale delivered an ultimatum, bombarded the island, and landed a force to punish the local chief for the unlawful imprisonment of the captain of an American whaler. State, 19.

1852-1853: Argentina.

Several landings of marines took place in order to protect American residents of Buenos Aires during a revolt. State, 19.

1853: Nicaragua.

American forces under Captain Hollins of the U.S.S. Cyane landed at Greytown about March 10 to protect American lives and interests during political disturbances. His activities were approved by the Secretary of the Navy. Moore, 414-415.

1853: China.

On September 11, a small marine force from the U.S. steamer Mississippi boarded a Siamese vessel in the Canton River and put down a mutiny. USMC, 1, 78.

1853: West Coast of Africa.

In accordance with the Treaty of 1842, on December 3, Marines joined in the capture of the slave schooner Cambrill by the U.S. Frigate Constitution off the Congo River on the west coast of Africa. USMC, 1, 78.

1853: Smyrna.

Martin Koszta, who was an American declarant, was released by his Austrian captors, upon an ultimatum given by Naval Captain Ingraham who trained his guns upon the Austrian vessel on which Koszta was held. Secretary of State Marcy defended the rescue against protest by the Austrian Government. Berdahl, 50.

1853-1854: Japan.

Commodore Matthew C. Perry led an expedition consisting of four men-of-war to Japan to negotiate a commercial treaty. Four hundred armed men accompanied Perry on his initial landing at Edo Bay in July, 1853, where he stayed for ten days after refusing to leave when ordered. He then sailed south, landing a force at the Bonin Islands, where he took possession, and at the Rukugus, where he established a coaling station. In March, 1854, he returned to Edo Bay with ten ships and 2,000 men, landed with an escort of 300 men, and after six weeks signed a treaty with Japanese authorities at Kanagawa. The whole campaign was on executive authority. State, 19.

1854: West Coast of Africa.

Pursuant to the Treaty of 1852, on March 10, Marines joined in the capture of a slave brig by the U.S. brig Perry off the west coast of Africa. USMC, 1, 78.
1854: 

> China.

American and British forces consisting of 150 English sailors, 60 U.S. sailors, and 30 merchant sailors landed at Shanghai on April 4 and stayed until June 7 to protect their nationals during a battle between Chinese imperial and revolutionary troops. State, 19.

1854: 

Greytown, Nicaragua.

In July, the commander of an American naval vessel demanded reparation after the U.S. minister to Central America was injured during a riot. When this was not forthcoming, the vessel bombarded the town. President Pierce defended the action of the American commander in his annual message to Congress. Moore, 415-416.

1854: Okinawa.

On July 6, a force of 20 Marines from the U.S. steamer Powhatan went ashore on Okinawa and seized a religious shrine in punishment of persons who murdered an American. On November 17, Marines and seamen from the U.S. sloop Vincennes went ashore again at Okinawa to enforce treaty provisions. USMC, I, 76.

1855: China.

There were two brief actions by U.S. warships, the first a landing in May at Shanghai to protect American interests there, the second an attack in August at Hong Kong against pirates. State, 20.

1855: Fiji Islands.

In September and October, marines from the sloop-of-war John Adams landed four times to seek reparations for depredations against Americans and to force natives to honor a treaty. The landing parties fought skirmishes and burned some villages. USMC, I, 79.

1855: Uruguay.


1856: Panama, Republic of New Granada.

U.S. forces landed and stayed two days to protect American interests, including the Isthmian railroad, during an insurrection. (By the treaty of 1846 with New Granada, the United States had acquired the right to protect the Isthmus and to keep it open, in return for guaranteeing its neutrality.) State, 20.
1858: China.

In October and November, the U.S. warships Portsmouth and Levant landed 280 officers and men to protect American interests at Canton during hostilities between the British and the Chinese and in response to an unprovoked assault upon an unarmed boat displaying the U.S. flag. The Americans took and destroyed four Chinese forts. The attack by U.S. war vessels without authority of Congress was approved by President Buchanan. Berdahl, 51.

1858: Uruguay.

Forces from two U.S. warships landed in January to protect American lives and property during a revolt in Montevideo. The action was taken in conjunction with the forces of other powers at the request of the local government. State, 20.

1858: African coast.

On September 8, Marines joined in the capture of a ketch laden with slave food by the U.S. sloop Marion off the southeast coast of Africa. The action was consistent with the Treaty of 1842. USMC, I, 30.

1858: Cuban waters.

After repeated acts of British cruisers in boarding and searching our merchant vessels in the Gulf of Mexico and adjacent seas, President Buchanan addressed remonstrances to the British Government against these searches and, without authority from Congress, ordered a naval force to the Cuban waters with directions "to protect all vessels of the United States on the high seas from search or detention by the vessels of war of any other nation." A conflict with Great Britain was avoided only by the abandonment of her claim to the right of visit and search in time of peace. Berdahl, 51; Richardson, 3038.

1858: Fiji Islands.

On October 6, about 60 Marines and sailors from the U.S.S. Vandalia landed to punish natives for the murder of two American citizens and engaged in a fierce conflict with 300 native warriors. State, 21.

1858-1859: Turkey.

American citizens were massacred in 1858 at Jaffa and mistreated elsewhere. In the face of Turkish indifference, the Secretary of State asked the U.S. Navy to make a display of force along the Levant. State, 21.

1858-1859: Paraguay.

From October 1858, to February, 1859, an American expedition went to Paraguay to demand reparation for an attack on a naval vessel in the Parana River during 1857. Apologies were forthcoming after a display of force, which amounted to compulsion. Congress authorized the action. State, 21.

1859: African coast.

On April 21 and 27, Marines joined in the capture of a slave ship near the Congo River, Africa. The action was consistent with the Treaty of 1842. USMC, I, 51.
1859: Mexico.

1859: China.
On July 31, forces from the U.S.S. Mississippi landed at Woosung and Shanghai, where they remained until August 2, to protect American interests and restore order. The American consul had sailed on the ship for assistance. State, 21.

1860: Kiasambe, West Africa.
On March 1, 40 Marines and seamen from the sloop-of-war Marion landed twice to prevent the destruction of American property during a period of local unrest. State, 21.

1860: Colombia (State of Panama).
On September 27, the Marine guard from the sloop U.S.S. St. Mary's landed to protect American interests during a revolt. This may have been authorized pursuant to the Treaty of 1846. State, 21.

1860: Japan.
On July 16, when Japanese shore batteries at Shimonoseki fired on a U.S. merchant ship, the U.S.S. Wyoming retaliated by firing on three Japanese vessels lying at anchor. The shots were returned, and, by the time the action was over, there were casualties on both sides. The American minister had demanded redress.

1864: Japan:
From July 14 to August 3, U.S. forces protected the U.S. Minister to Japan when he visited Yedo concerning some American claims against Japan. The forces also were designed to impress the Japanese with American power. LRS, IV, 52.

1865: Japan.
Between September 4 and 8, naval forces of the United States, Great Britain, France, and the Netherlands jointly forced open the Straits of Shimonoseki, which had been closed in violation of commercial agreements. Shore batteries were destroyed and 70 cannon seized. State, 21.

1865-1866: Mexican border.
In late 1865, General Sheridan was dispatched to the Mexican border with 30,000 troops to back up the protest made by Secretary
of State Seward to Napoleon III that the presence of over 25,000 French troops in Mexico "is a serious concern to the United States." In February, 1866, Seward demanded a definite date be set for withdrawal and France complied. Though American forces did not cross the border, the threat of foreign military operations was clear and imminent. U. S., 580-581.

1865: Formosa.

American forces from the U. S. S. St. Marys landed to protect American interests during a revolt. This was apparently implied by the Treaty of 1846. State, 22.

1866: China.

Various landings by over 100 marines and seamen were made in June and July at Newchwang to punish an assault on the American Consul and to guard diplomats. State, 22.

1866: Formosa.

On June 13, 181 marines and seamen from the U.S.S. Hartford and U.S.S. Wyoming landed to punish natives who had murdered the crew of a wrecked American merchantman. Several huts were burned. USMC, I, 91.

1867: Nicaragua.

On September 6, marines landed and occupied Managua and Leon. USMC, I, 92.

1868: Japan.

From February 1 until April 4, landings were made at Hiago, Nagasaki, and Yokohama to protect American lives and property during local hostilities. USMC, I, 92.

1868: Uruguay.

At the request of local Uruguayan authorities, several landings were made from five U. S. steamers at Montevideo during the month of February in order to protect American lives and property during an insurrection. State, 22.

1868: Colombia.

An American force landed at Aspinell in April to protect the transit route during the absence of local police. This was impliedly permitted by the Treaty of 1846. State, 25.
1869-1871: Dominican Republic.

President Grant, having negotiated a treaty of annexation, sent a strong naval force to the island to protect it from invasion and internal disorder, both during consideration of the treaty by the Senate and for months after its rejection. Berdahl, 48.

1870: Mexico.

On June 17, the U.S.S. Mohican pursued a pirate ship up the Tecopen River near Mazatlan, landed a party of Marines and seamen, and destroyed it during a pitched battle. State, 22.

1871: Korea.

In June, American landing forces under Admiral Rodgers captured five Korean forts after a surveying party, granted permission to make certain surveys and soundings, had been attacked. No treaty or convention was in effect. State, 22.

1873: Colombia.

In May and September, nearly 300 American forces landed at the Bay of Panama to protect American lives and interests during local hostilities. The actions were impliedly allowed by the Treaty of 1846. State, 22.

1873: Cuban waters.

On October 31, the steamer Virginius, flying the American flag, was captured some 18 miles from Jamaica by the Spanish steamer Tornado, her actual destination having been to make a landing of men and arms in Cuba. In violation of treaty stipulations with the U.S. regarding counsel and trial before a proper court, a summary court-martial was convened and with circumstances of the utmost barbarity, a total of 53 of the crew and passengers were executed, including a considerable number of Americans. Large meetings were held in this country demanding violent action against Spain and President Grant authorized the Secretary of the Navy to put our navy on a war footing. Every available ship was commissioned or recalled from foreign stations and war looked imminent. Spain yielded and the Virginius with her surviving crew and passengers were returned in late December. Also, by an agreement concluded February 27, 1875, Spain admitted the illegality of the capture and the wrongfulness of the summary execution and paid an indemnity of $80,000 to the United States. Chadwick, 314-351.

1873-1882: Mexico.

U.S. troops repeatedly crossed the Mexican border to pursue cattle thieves and Indian marauders. Mexico occasionally reciprocated. Such incursions were finally recognized as legitimate by agreements concluded in 1882 and subsequent years. Moore, 418-425.
1874: Hawaii.

In February, a party of 150 men from two U.S. vessels landed to preserve order at the request of local authorities. State, 23.

1876: Mexico.

On May 16, at the request of the U.S. consul at Matamoros, a small American force was landed to preserve order when the town was temporarily without a government. State, 23.

1882: Egypt.

On July 14, over 100 forces from the U.S.S. Lancaster, U.S.S. Quinquebus, and U.S.S. Nipsic landed at Alexandria, when the citv was being bombarded by the British navy, in order to protect American interests there, including the American consulate. State, 23.

1885: Colombia (State of Panama).

On January 18, March 16, March 31, April 8, April 11, April 12, and April 25, American forces landed to protect American property and guard valuables in transit over the Isthmus during local revolutionary activity, an action authorized under the Treaty of 1846. USMC, I, 96.
1888: Korea.

On June 19, 25 men from the U.S.S. Essex landed at Chemulpo and marched to Seoul to protect American residents during unsettled political conditions. The action was requested by the American Minister. State, 23.

1888-1889: Samoan Islands.

In 1886, the German consul announced that the Sanwan group was henceforth a German protectorate, an action that brought the United States and Great Britain together in opposition. By 1889, Germany and the United States were close to a direct confrontation. The United States and Germany, together with Great Britain, shared certain treaty rights in Samoa for the maintenance of naval depots. In November 1888, U.S. Marines landed from the U.S.S. Nimrod to protect American interests after civil strife broke out. In January, 1889, German forces landed, and, when those forces were attacked by the natives, German ships shelled the island. This action by Germany aroused the American public, and Congress appropriated $500,000 for the protection of American lives and property on the island and $100,000 for the development of Pago Pago harbor. The United States also ordered two more warships on the scene, and an untoward event might have touched off war had not a hurricane in March, 1889, destroyed all the warships except one British vessel. Thereafter, the Germans invited the three powers to a conference, which was agreed to and held in Berlin. In April, 1889, they established a three-power protectorate there. In 1899 the Samoans were divided, the United States acquiring Tutuila. State, 23.

1888: Haiti.

In December, American warships made a display of force to obtain the release of an American merchant vessel captured by a Haitian warship. The Haitian Government surrendered the ship and paid an indemnity after Admiral Luce gave an ultimatum ordering its release before sunset. State, 24.

1889: Hawaii.

On July 30, at the request of the American Minister in Honolulu, the U.S.S. Adams sent a marine guard ashore to protect American lives and property during revolutionary disorder. State, 24.
1890: Argentina.

The U.S.S. Talloosa landed a party in July to protect the American Consulate and Legation in Buenos Aires during a revolt. State, 24.

1891: Navassa Island, Haiti.

American forces from the U.S.S. Kearsarge landed on June 2 to protect American lives and property during a period of unrest. The action was taken pursuant to Congressional action. State, 24.

1891: Bering Sea.

An American squadron operated from June to October, jointly with British naval vessels, seizing four schooners. Rogers, 109.

1891: Chile.

In August, 102 Americans of the South Pacific station landed at Valparaiso during a revolt in order to protect the American Consulate and American lives. State, 24.

1894: Brazil.

The U.S. Navy engaged in gunfire and a show of force in January to protect American shipping at Rio de Janeiro during a revolt of the Brazilian navy. President Cleveland stated our action "was clearly justified by public law." State, 24.

1894: Nicaragua.

In July, American forces landed at Bluefields to protect American interests during a revolt. State, 24.

1894-1896: Korea.

On July 24, at the request of the American Minister, a force of 21 Marines and 29 sailors landed at Chemulpo and marched to Seoul to protect American lives and property during the Sino-Japanese War. A Marine guard remained at the American Legation until 1896. State, 24.

1894-1895: China.

On December 6, 1894, Marines disembarked from the U.S.S. Baltimore at Taku and marched to Tientsin to protect American lives and property during the Sino-Japanese War. The landing party maintained order until May 16, 1895. USMC, I, 98.
1895: Colombia (State of Panama).

Marines from the U.S.S. Atlanta landed in March to protect American interests during a revolt. This appears to have been authorized by treaty. State, 24.

1895-1896: Korea.

During internal disorders from October 11, 1895, to April 3, 1896, the American Legation at Seoul was protected by Marines from various ships. Ellsworth, 66.

1896: Nicaragua.

On May 2, marines were put ashore at Corinto by the U.S.S. Alert during revolutionary disorders to protect American interests. USMC, I, 99.

1896: Nicaragua.

On February 7, Marines landed at San Juan del Sur by the U.S.S. Alert to protect Americans against disorder. USMC, I, 99.

1896-1899: China.

American forces guarded the Legation at Peking and the Consulate at Tientsin from November, 1896, to March, 1899, during a period of unrest. President McKinley reported this protective action in his annual message. State, 25.

1896: Nicaragua.

On February 24, in response to a petition from foreign merchants during an insurrection, Marines landed to protect life and property at San Juan del Norte and Bluefields. State, 25.

1896: Samoan Islands.

Sixty Americans landed on February 14 from the U.S.S. Philadelphia, and on April 1 joined a British force in efforts to disperse native rebels. This may have been under color of treaty or statute. State, 25.

1899-1901: Philippine Islands.

The United States employed 126,468 troops against the Philippine Insurrection without a declaration of war after the Treaty of Peace with Spain was concluded. Presumably the United States acted to suppress the rebellion under authority of the Treaty of Peace, which transferred to it the sovereignty possessed by Spain in the Philippine Islands. US. of Claims, 26-30.
1900-1901: "Boxer" Rebellion (Peking).

In 1900 President McKinley sent 5,000 troops to join the international military force organized for the relief of foreign legations besieged in Peking by Chinese "Boxers." Using troops already mobilized for the Spanish-American War and the Philippine Insurrection, McKinley did not seek authority from Congress. Peace terms were concluded at an international conference, and a peace Protocol was signed September 7, 1901. The Protocol was not submitted to Congress. Because of the obvious inability of Chinese authorities to control local disorders, the United States acquired the right to maintain a guard at Peking for defense of the American Legation and to station military forces at certain points in Chinese territory to keep open communications between Peking and the sea. (Earlier, in 1858, the United States had acquired the right by treaty to station naval vessels in Chinese waters.) State, 3-4.

1901: Colombia (State of Panama).

American forces went ashore in late November and stayed until December to protect American property and to keep transit lines open across the Isthmus during serious political disturbances. This apparently was authorized by the Treaty of 1846. State, 29.

1902: Colombia (State of Panama).

Marine guards landed in April to protect American lives and the railroad across the Isthmus during civil disorders. They continued to land at various times between April and November. This appears to have been authorized by the Treaty of 1846. State, 25.

1903: Honduras.

American forces disembarked at Puerto Cortez in March to protect the American Consulate and port facilities during a period of revolutionary activity. State, 25.

1903: Dominican Republic.

In April, 29 Marines landed at Santo Domingo, where they remained for three weeks to protect American interests during a period of political disturbances. State, 25.
1903-1904: Syria.

A Marine guard landed and remained for a few days at Beirut in April to protect the American Consulate during a Moslem uprising. Also our Mediterranean Squadron demonstrated at Beirut from September to January and at Smyrna the next August. State, 25.

1903: Panama.

A revolution leading to the independence of Panama from Colombia broke out in November. Marines landed from the U.S. Dixie to prevent Colombian troops from carrying out a threat to kill American citizens, after Commander Hubbard had refused to allow the Colombians to transport their troops across the Isthmus. Marine guards remained on the Isthmus from the date of Panamanian independence (November 4, 1903) until January, 1914, to protect American interests during the construction of the Canal. This was allowed under the Hay-Bunau-Varilla Treaty. State, 22-26.

1903-1904: Abyssinia.

Twenty-five American marines were sent to protect the U. S. Consul General from November 18, 1903, to January 15, 1904, while he was negotiating a treaty with the Emperor. USMC, I, 109.

1904: Dominican Republic.

On January 3, 7, and 17, and on February 11, over 300 Marines landed at Puerto Plata, Sosua, and Santo Domingo to protect American lives and property during a revolt. USMC, I, 108-109.

1904: Morocco.

A squadron demonstrated in Moroccan waters in June to force the release of a kidnapped American. A Marine contingent had landed on May 30 to protect the Consul General. State, 26.

1904: Panama.

American troops were used to protect American lives and property at Assen in November when a revolt seemed imminent. This action seems to have been authorized by treaty. State, 26.

1904-1905: Korea.

In January, 1904, over 100 American troops were sent to guard the American Legation at Seoul because of the outbreak of the Russo-Japanese War. They remained until November 1905. In March, 1904, marines assisted in the evacuation of American nationals. USMC, I, 108.
1905-1907: Dominican Republic.

After the Senate failed to ratify a treaty providing that the United States should guarantee the integrity of the Dominican Republic, take charge of its customs, and settle its obligations, President Roosevelt nevertheless put its terms into effect for two years until in 1907 the Senate ratified a slightly revised version. Berdahl, 41-42.

1906-1909: Cuba.

An American squadron demonstrated off Havana, and, in September, marines landed to protect American interests during a revolution. In October, marine and army units landed and took up quarters in many Cuban towns in connection with the temporary occupation of the country under a provisional governor appointed by the United States. This occupation was within the scope of the provision of the 1903 Treaty of Relations between the two countries, which gave the United States the right to intervene to preserve order. The occupation lasted until January, 1909. State, 26.

1907: Honduras.

On March 18, during a war between Honduras and Nicaragua, the U.S.S. Marietta disembarked 10 men to guard the American Consulate at Trujillo. The U.S.S. Paducah also landed forces at Lagunia and Choloma on April 26. State, 26.

1910: Nicaragua.

In May, one hundred men from the U.S.S. Paducah landed at Greytown to protect American lives and property during a revolt. The U.S.S. Dubuque also engaged in shows of force. Joined combat was "hourly expected." State, 26.

1911: Honduras.

Sixty men from the U.S.S. Tacoma and Marietta went ashore at Puerto Cortez during a revolt to protect American interests. The American Commander threatened to use force if necessary. State, 26.

1911-1912: China.

American forces made six landings to protect American interests during the initial stages of a revolution. They were stationed at Pechow, Chinkiang, Peking, Hankow, Nanking, Shanghai, and Yalu. This may have occurred pursuant to treaty rights acquired during the "Boxer" Rebellion. State, 27.

1912: Panama.

During June and July, at the request of local political groups, American troops supervised elections outside the Canal Zone. This was impliedly authorized by the Hay-Bunau-Varilla Treaty. State, 27.

1912: Cuba.

In May, American troops landed in eastern Cuba during a revolt and remained for three months to protect American interests. This appears to have been authorized by the Treaty of 1903. President Taft telegraphed the President of Cuba that the action was for protection only. Hackworth, 328-329.