

Applying the War Powers Resolution to the War on Terrorism

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LEGAL SCHOLARS have long debated the constitutional allocation of war powers between the President and the Congress, and the effect of the War Powers Resolution on that allocation. This Administration follows the course of administrations before us, both Democratic and Republican, in the view that the President's power to engage U.S. Armed Forces in military hostilities is not

limited by the War Powers Resolution.¹ The sources of Presidential power can be found in the Constitution itself. I shall discuss both the War Powers Resolution and the Constitution today. In doing so, I will explain in particular how the President's conduct of the war against terrorism is authorized under the Constitution and consistent with the War Powers Resolution.

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- 1 Pub. L. No. 93-148, 87 Stat. 555 (1973) (codified at 50 U.S.C. §§ 1541-1548) ("WPR"). It is often said that "every President has taken the position that [WPR] is an unconstitutional infringement by the Congress on the President's authority as Commander-in-Chief." Congressional Research Service, Library of Congress, *War Powers Resolution: Presidential Compliance*, at 1-2 (2002). For example, the Executive Branch has consistently rejected WPR's articulation, in section 2(c) (50 U.S.C. § 1541(c)), of the limits on the President's constitutional power to conduct military operations. See, e.g., *Overview of the War Powers Resolution*, 8 Op. O.L.C. 271, 274 (1984); *Executive Power with Regard to the Libyan Situation*, 5 Op. O.L.C. 432, 441 (1981); *Presidential Powers Relating to the Situation in Iran*, 4A Op. O.L.C. 115, 121-22 (1979). The unconstitutionality of section 5(b)'s 60-day limitation on the deployment of troops, absent Congressional authorization or declaration of war (50 U.S.C. § 1544(b)), was one of the major reasons why President Nixon vetoed WPR. See *Veto of the War Powers Resolution*, PUB. PAPERS OF RICHARD NIXON: 1973, at 893 (1975).

First, the War Powers Resolution of 1973. Section 2 of that Resolution recognizes that the President may “introduce United States Armed Forces into hostilities” pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) “a national emergency created by attack upon the United States, its territories or possessions, or its Armed Forces.”²

Section 2 of the Resolution recognizes the President’s broad power in the current circumstances. The President’s decision to use the Armed Forces to combat terrorism and respond to the attacks of September 11 fall

within two of the resolution’s enumerated provisions for using military force. First, the United States was attacked on September 11 by members of an international network of terrorists. That attack unequivocally placed the United States in a state of armed conflict, justifying a military response, as recognized by Congress,³ while NATO⁴ and the United Nations⁵ recognized the U.S.’s exercise of its right to self defense. In response to the September 11 attack, the President immediately issued Proclamation 7463, declaring the existence of a state of national emergency.⁶

2 50 U.S.C. § 1541(c).

3 Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001) (authorizing use of force in response to September 11 attacks).

4 Statement of NATO Secretary General Lord Robertson (Oct. 2, 2001), available at www.nato.int/docu/speech/2001/so11002a.htm (“[I]t has now been determined that the attack against the United States on 11 September was directed from abroad and shall therefore be regarded as an action covered by Article 5 of the Washington Treaty ...”). See also North Atlantic Treaty, Apr. 4, 1949, art. 5, 63 Stat. 2241, 2244, 34 U.N.T.S. 243, 246 (“The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all”).

5 S.C. Res. 1368 (2001) (“[u]nequivocally condemn[ing] in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001,” “regard[ing] such acts, like any act of international terrorism, as a threat to international peace and security,” and “[r]ecognizing the inherent right of individual or collective self-defence in accordance with the [United Nations] Charter”); S.C. Res. 1373 (2001) (same). See also Charter of the United Nations, June 26, 1945, art. 51, 59 Stat. 1031, 1044-45, T.S. No. 993 (recognizing “inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations”).

In addition, the Organization of American States and the Government of Australia determined that parallel provisions in their mutual defense treaties applying to “armed attacks” had also been activated. See Twenty-fourth Meeting of Consultation of Ministers of Foreign Affairs, Terrorist Threat to the Americas, OAS Doc. OEA/Ser.F/IL.24 RC.24/Res.1/01 (Sep. 21, 2001), available at www.oas.org/OASpage/crisis/RC.24e.htm (resolving “[t]hat these terrorist attacks against the United States of America are attacks against all American states and that in accordance with all the relevant provisions of the Inter-American Treaty of Reciprocal Assistance ... and the principle of continental solidarity, all States Parties ... shall provide effective reciprocal assistance to address such attacks and the threat of any similar attacks against any American state, and to maintain the peace and security of the continent”); Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. 3(1), 62 Stat. 1681, 1700, 21 U.N.T.S. 77, 95 (“an armed attack by any State against an American State shall be considered as an attack against all the American States”); White House, Office of the Press Secretary, *U.S.-Australia United Against Terrorism*, available at www.whitehouse.gov/news/releases/2001/09/20010914-12.html (“The Governments of Australia and the United States have concluded that Article IV of their mutual defense treaty applies to the terrorist attacks on the United States.”); Security Treaty Between Australia, New Zealand and the United States of America, Sep. 1, 1951, art. IV, 3 U.S.T. 3420, 3423, 131 U.N.T.S. 83 (“ANZUS Pact”) (“Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes”).

6 Proclamation 7463, *Declaration of National Emergency by Reason of Certain Terrorist Attacks*, 66 Fed. Reg. 48,199 (2001).

Thus, the conditions recognized by Section 2 of the Resolution as justifying the use of force without any action whatsoever from Congress – an attack on the United States, and a resulting national emergency – have each been satisfied.

In addition, the President has specific statutory authorization, in the form of S.J. Res. 23 (Pub. L. No. 107-40). That resolution, which this body approved unanimously last September, states that the President may “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”⁷ The resolution recognizes that the President determines what military actions are necessary to combat those who are associated with the organizations and individuals responsible for September 11.

Thus, the President’s authority to conduct the war against terrorism is recognized by Section 2 of the War Powers Resolution. Congress has specifically expressed its support for the use of the Armed Forces, and the United States has suffered an attack.

Moreover, the War Powers Resolution specifically provides, as it must, that “[n]othing

in this joint resolution ... is intended to alter the constitutional authority of the Congress or of the President.”⁸ This important language recognizes the President’s constitutional authority, separate and apart from the War Powers Resolution, to engage the U.S. Armed Forces in hostilities. That brings us to the question: What is the scope of the President’s constitutional power, expressly recognized by the Resolution?

Congress provided an answer when it overwhelmingly approved S.J. Res. 23. That resolution expressly states that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.”⁹ As Chairman Feingold accurately explained on the Senate Floor, this language plainly recognizes “that the President has existing constitutional powers.”¹⁰

This is quite plainly a correct interpretation of the President’s war power under the Constitution. The relevant scholarly works could fill this entire room,¹¹ but I will try to summarize the argument briefly here. Under Article II, Section 1 of the Constitution, the President is the locus of the entire “executive Power” of the United States¹² and, thus, in the Supreme Court’s words, “the sole organ of the federal government in the field of international relations.”¹³ Under Article II, Section 2, he is the “Commander in Chief” of the Armed

7 Pub. L. No. 107-40, § 2(a), 115 Stat. 224. The Senate approved the resolution by a vote of 98-0. 147 Cong. Rec. S9421 (daily ed. Sep. 14, 2001).

8 50 U.S.C. § 1547(d).

9 Pub. L. No. 107-40, 115 Stat. 224.

10 147 Cong. Rec. S9417 (daily ed. Sep. 14, 2001) (statement of Sen. Feingold).

11 Compare, e.g., John C. Yoo, *The Continuation of Politics by Other Means: The Original Understanding of War Powers*, 84 Cal. L. Rev. 167 (1996), and Robert J. Delahunty & John C. Yoo, *The President’s Constitutional Authority to Conduct Military Operations Against Terrorist Organizations and the Nations That Harbor or Support Them*, 25 Harv. J.L. & Pub. Pol’y 487 (2002), with Harold H. Koh, *THE NATIONAL SECURITY CONSTITUTION* (1990), John H. Ely, *WAR AND RESPONSIBILITY* (1993), Michael J. Glennon, *CONSTITUTIONAL DIPLOMACY* (1990), and Louis Fisher, *PRESIDENTIAL WAR POWER* (1995).

12 U.S. Const. art. II, § 1, cl. 1.

13 *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (quoting 10 Annals of Cong. 613 (1800) (statement of Rep. Marshall) (“The President is the sole organ of the nation in its external

Forces of the United States.¹⁴ These two provisions make clear that the President has the constitutional authority to introduce the U.S. Armed Forces into hostilities when appropriate, with or without specific congressional authorization.

Notably, nothing in the text of the Constitution requires the advice and consent of the Senate, or the authorization of Congress, before the President may exercise the executive power and his authority as Commander in Chief. By contrast, Article II requires the President to seek the advice and consent of the Senate before entering into treaties or appointing ambassadors.¹⁵ Article I, Section 10 denies states the power to “engage” in war, except with Congressional authorization or in case of actual invasion or imminent danger.¹⁶ Moreover, founding documents prior to the U.S. Constitution, such as the South Carolina Constitution of 1778, expressly prohibited the executive from commencing war or concluding peace without legislative approval.¹⁷ The Founders of the Constitution knew how to constrain the President’s power to exercise his authority as Commander in Chief to engage U.S. Armed Forces in hostilities, and decided not to do so.

Of course, as the President has the constitutional authority to engage U.S. Armed Forces in hostilities, Congress has a broad range of war powers as well. Congress has the power to tax and to spend.¹⁸ Congress has the power to raise and support armies and to provide and maintain a Navy.¹⁹ And Congress has the power to call forth the militia,²⁰ and to make rules for the government and regulation of the Armed Forces.²¹ In other words, although the President has the power of the sword, Congress has the power of the purse. As James Madison explained during the critical constitutional ratifying convention of Virginia, “the sword is in the hands of the British King; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist.”²² The President is Commander in Chief, but he commands only those military forces which Congress has provided.

Congress also has the power to declare war.²³ The power to declare a legal state of war and to notify other nations of that status once had an important effect under the Law of Nations, and continues to trigger significant domestic statutory powers as well, such as under the Alien Enemy Act of 1798²⁴ and federal surveillance laws.²⁵ But this power has

relations, and its sole representative with foreign nations.”)).

14 U.S. Const. art. II, § 2, cl. 1.

15 U.S. Const. art. II, § 2, cl. 2.

16 U.S. Const. art. I, § 10, cl. 3.

17 S.C. Const. art. XXVI (1776), reprinted in Francis N. Thorpe, ed., 6 *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS* at 3247 (1909). See also Articles of Confederation, art. IX, § 6, 1 Stat. 4, 8 (1778) (“The United States, in Congress assembled, shall never engage in a war ... unless nine States assent to the same”).

18 U.S. Const. art. I, § 8, cl. 1; U.S. Const. art. I, § 9, cl. 7.

19 U.S. Const. art. I, § 8, cls. 12 & 13.

20 U.S. Const. art. I, § 8, cl. 15.

21 U.S. Const. art. I, § 8, cl. 14.

22 10 *THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION* 1282 (1993) (June 14, 1788 statement of James Madison during Virginia Convention debates).

23 U.S. Const. art. I, § 8, cl. 11. By contrast, Article I, Section 10 authorizes states, under certain conditions, to “engage in War,” U.S. Const. art. I, § 10, cl. 3, while Article III describes the offense of treason as the act of “levying War” against the United States, U.S. Const. art. III, § 3, cl. 1.

24 50 U.S.C. § 21.

25 50 U.S.C. §§ 1811, 1829, 1844.

seldom been used. Although U.S. Armed Forces have, by conservative estimates,²⁶ been deployed well over a hundred times in our Nation's history,²⁷ Congress has declared war just five times.²⁸ This long practice of U.S. engagement in military hostilities without a declaration of war demonstrates that previous Presidents and Congresses have interpreted the Constitution as we do today.

As the United States rose to global prominence in the post-World War II era, Congress provided the President with a large and powerful peacetime military force.

Presidents of both parties have long used that military force to protect the national interest, even though Congress has not declared war since World War II. President Truman introduced U.S. Armed Forces into Korea in 1950 without prior congressional approval.²⁹ President Kennedy claimed constitutional authority to act alone in response to the Cuban Missile Crisis by deploying a naval quarantine around Cuba.³⁰ Presidents Kennedy and Johnson expanded the U.S. military commitment in Vietnam absent a declaration of war.³¹

26 See, e.g., Congressional Research Service, Library of Congress, *Instances of Use of United States Armed Forces Abroad, 1798-1999* (1999).

27 Only a fraction of those incidents were conducted with Congressional authorization. See Act of May 28, 1798, 1 Stat. 561 (Quasi War with France); Act of Feb. 6, 1802, 2 Stat. 129 (First Barbary War); Act of Jan. 15, 1811, 3 Stat. 471 (East Florida); Act of Feb. 12, 1813, 3 Stat. 472 (West Florida); Act of Mar. 3, 1815, 3 Stat. 230 (Second Barbary War); Act of Mar. 3, 1819, 3 Stat. 510 (African Slave Trade); Joint Resolution of June 2, 1858, 11 Stat. 370 (Paraguay); Joint Resolution of Apr. 20, 1898, 30 Stat. 738 (Spanish-American War); Joint Resolution of Apr. 22, 1914, 38 Stat. 770 (Mexico); Joint Resolution of Jan. 29, 1955, 69 Stat. 7 (Formosa); Joint Resolution of Mar. 9, 1957, 71 Stat. 5 (codified at 22 U.S.C. § 1962) (Middle East); Joint Resolution of Aug. 10, 1964, 78 Stat. 384 (Gulf of Tonkin); Authorization for Use of Military Force Against Iraq Resolution, Pub. L. No. 102-1, 105 Stat. 3 (1991); Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

28 See Act of June 18, 1812, 2 Stat. 755 (1812) (War of 1812); Act of May 13, 1846, 9 Stat. 9 (Mexican-American War); Act of Apr. 25, 1898, 30 Stat. 364 (Spanish-American War); Joint Resolution of Apr. 6, 1917, 40 Stat. 1 (World War I: Germany); Joint Resolution of Dec. 7, 1917, 40 Stat. 429 (World War I: Austria-Hungary); Joint Resolution of Dec. 8, 1941, 55 Stat. 795 (World War II: Japan); Joint Resolution of Dec. 11, 1941, 55 Stat. 796 (World War II: Germany); Joint Resolution of Dec. 11, 1941, 55 Stat. 797 (World War II: Italy); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Bulgaria); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Hungary); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Rumania).

29 See *Proposed Deployment of United States Armed Forces into Bosnia*, 19 Op. O.L.C. 327, 331 n.5 (1995) ("The boldest claim of Executive authority to wage war without congressional authorization was made at the time of the Korean War – a conflict that ultimately lasted for three years and caused over 142,000 American casualties.").

30 *Proclamation 3504: Interdiction of the Delivery of Offensive Weapons to Cuba*, PUB. PAPERS OF JOHN F. KENNEDY: 1962, at 809, 810 (1963) ("acting under and by virtue of the authority conferred upon [him] by the Constitution and statutes of the United States," President Kennedy ordered a U.S. naval blockade against Cuba and authorized the use of force under certain circumstances to enforce the blockade).

31 During the Johnson Administration, Congress enacted the Gulf of Tonkin Resolution, 78 Stat. 384, which authorized the use of force. In signing that resolution, President Johnson insisted that "[a]s Commander in Chief the responsibility is mine – and mine alone" to order military actions in Southeast Asia. 2 PUB. PAPERS OF LYNDON B. JOHNSON: 1963-1964, at 946 (1965). See also Arthur M. Schlesinger, Jr., *THE IMPERIAL PRESIDENCY 180-81* (1973) (quoting Johnson in 1967: "We stated then, and we repeat now, we did not think the resolution was necessary to what we did and what we're doing").

In response to President Nixon's expansion of the Vietnam War into Laos and Cambodia, Congress approved the War Powers Resolution,³² but that resolution expressly disclaimed any intrusion into the President's constitutional war power.³³ Accordingly, Presidents Ford, Carter, Reagan, and the first President Bush have committed U.S. Armed Forces on a number of occasions.³⁴ In these cases, the Administration has generally consulted with, notified, and reported to Congress, consistent with the War Powers Resolution.³⁵

President Clinton deployed U.S. Armed Forces in Haiti and Bosnia without prior congressional authorization.³⁶ In 1999, the Clinton Administration relied on the President's constitutional authority to use force in Kosovo. Assistant Secretary of State Barbara Larkin testified before Congress that April that "there is no need for a declaration of war. Every use of U.S. Armed Forces, since

World War II, has been undertaken pursuant to the President's constitutional authority. ... This Administration, like previous Administrations, takes the view that the President has broad authority as Commander-in-Chief and under his authority to conduct foreign relations, to authorize the use of force in the national interest."³⁷

In short, Presidents throughout U.S. history have exercised broad unilateral power to engage U.S. Armed Forces in hostilities. Congress has repeatedly recognized the existence of Presidential constitutional war power, in the War Powers Resolution of 1973 and more recently in S.J. Res. 23. And the courts have supported this view as well. As the Supreme Court noted in *Hamilton v. Dillin* (1874), it is "the President alone, who is constitutionally invested with the entire charge of hostile operations."³⁸ Significantly, the courts have never stopped the President from deploying U.S. Armed Forces or

32 That legislation was enacted over President Nixon's veto. See *Veto of the War Powers Resolution*, PUB. PAPERS OF RICHARD NIXON: 1973, at 893 (1973) ("the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation. ... [The resolution] would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. ... The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution – and any attempt to make such alterations by legislation alone is clearly without force.").

33 50 U.S.C. § 1547(d) ("Nothing in this joint resolution ... is intended to alter the constitutional authority of the Congress or of the President").

34 See Congressional Research Service, Library of Congress, *Instances of Use of United States Armed Forces Abroad, 1798-1999* (1999).

35 But not always. See 8 Op. O.L.C. at 281-83 (listing episodes in which the President introduced U.S. Armed Forces into actual or imminent hostilities or hostile territory, without complying with the reporting requirements of the War Powers Resolution, during the Nixon, Ford, Carter, and Reagan Administrations).

36 See *Deployment of United States Armed Forces into Haiti*, 18 Op. O.L.C. 173, 175-76 (1994) ("the President may introduce troops into hostilities or potential hostilities without prior authorization by the Congress"); *Proposed Deployment of United States Armed Forces into Bosnia*, 19 Op. O.L.C. 327, 335 (1995) ("the President has authority, without specific statutory authorization, to introduce troops into hostilities in a substantial range of circumstances").

37 See H. Con. Res. 82, *Directing the President to Remove Armed Forces From Operations Against Yugoslavia*, and H.J. Res. 44, *Declaring War Between the United States and Yugoslavia: Markup Before the House Comm. on Int'l Relations*, 106th Cong. 32-33 (1999) (Serial No. 106-41) ("1999 House Hearing") (statement of Assistant Secretary of State Barbara Larkin).

38 88 U.S. (21 Wall.) 73, 87 (1874).

engaging them in hostilities – most recently, in the case of *Campbell v. Clinton*.³⁹

That said, although the last Administration, like its predecessors, questioned the wisdom and the constitutionality of the War Powers Resolution,⁴⁰ it is our belief that Government works best when the two branches cooperate in matters concerning the use of the Armed Forces. Accordingly, we are committed to close consultations with Congress whenever possible regarding the need to use force to combat terrorism and to protect our national interest. We value the views of Congress regarding the appropriate use of military force, as evidenced by our close and mean-

ingful consultations with Congress after the attacks of September 11, and before the introduction of U.S. Armed Forces into combat action in Afghanistan on October 7, 2001. In addition to the President himself addressing a Joint Session of Congress on September 20,⁴¹ senior members of the Administration briefed Members of Congress and their staffs on over 10 occasions in that short time period. One result of these consultations was the enactment of S.J. Res. 23, which the President welcomed.⁴²

At the same time, however, we must recognize that we are in a war against, to use Chairman Feingold's words again, "a loose

39 203 F.3d 19 (D.C. Cir.), cert. denied, 531 U.S. 815 (2000). In *Campbell*, the D.C. Circuit declined to intervene in President Clinton's military actions in Kosovo. As evidenced in the several opinions in that case, various procedural obstacles make it unlikely that any court would ever reach the question of the President's constitutional power to engage the U.S. Armed Forces in military hostilities, regardless of whether the suit is brought by a Member of Congress or a private citizen. See also *Holtzman v. Schlesinger*, 484 F.2d 1307 (2d Cir. 1973) (Vietnam); *Luftig v. McNamara*, 373 F.2d 664, 665-66 (D.C. Cir. 1967) (Vietnam); *Ange v. Bush*, 752 F. Supp. 509 (D.D.C. 1990) (Persian Gulf War); *Crockett v. Reagan*, 558 F. Supp. 893 (D.D.C. 1982) (El Salvador); cf. *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) ("policies in regard to the conduct of foreign relations [and] the war power ... are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference"); *Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950) ("Certainly it is not the function of the Judiciary to entertain private litigation – even by a citizen – which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region."); but see *Dellums v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990) (Persian Gulf War). Unsurprisingly, then, a federal district court recently dismissed *sua sponte* a suit filed on August 27, 2002 to enjoin the President from engaging in military action against Iraq absent a declaration of war or other extenuating circumstances on the grounds of lack of standing and the political question doctrine. See *Mahorner v. Bush*, 224 F. Supp. 2d 48 (D.D.C. 2002).

40 See 1999 House Hearing at 36 (statement of Assistant Secretary of State Barbara Larkin) (saying "Yes" in response to question from Rep. Salmon: "Is it the Administration's position then that the War Powers Act is unconstitutional, Ms. Larkin?"); *id.* at 37 (statement of State Department Legal Adviser Mike Matheson) ("This Administration has not taken a formal stance on the constitutionality of the 60-day provision to this point, but has taken the view that it is unwise and should be repealed."). See also note 1.

41 *Address to a Joint Session of Congress and the American People*, available at www.whitehouse.gov/news/releases/2001/09/20010920-8.html.

42 *President Signs Authorization for Use of Military Force bill*, available at www.whitehouse.gov/news/releases/2001/09/20010918-10.html. The President made clear that his approval of S.J. Res. 23 was not based on his need for legal authority, explaining that "Senate Joint Resolution 23 recognizes the seriousness of the terrorist threat to our Nation and the authority of the President under the Constitution to take action to deter and prevent acts of terrorism against the United States. In signing this resolution, I maintain the longstanding position of the executive branch regarding the President's constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution." *Id.*

network of terrorists,” and not “a state with clearly defined borders.” When fighting “a highly mobile, diffuse enemy that operates largely beyond the reach of our conventional war-fighting techniques,” extensive congressional discussions will often be a luxury we cannot afford. Our enemy hides in the civilian populations of the nations of the world. As Chairman Feingold pointed out, “there can be no peace treaty with such an enemy.”⁴³ Likewise, there can be no formal, public declaration of war against such an enemy.

The attacks of September 11 introduced the United States into an unprecedented military situation. This Administration is confident that the allocation of war powers contemplated by the Founders of our Constitution is fully adequate to address the dangers of the Twenty-First Century, and that, armed with the war powers conferred upon him by the Constitution and recognized by the War Powers Resolution, the President will be able to work effectively with this Committee and with Congress to ensure the protection of the United States from additional terrorist attack. *JB*

⁴³ 147 Cong. Rec. S9418 (daily ed. Sep. 14, 2001) (statement of Sen. Feingold).