WHY DO SOME LEGISLATORS GO TO COURT?
CONGRESS AND THE LAWSUIT AGAINST PRESIDENT REAGAN
FOR NONCOMPLIANCE WITH THE WAR POWERS RESOLUTION
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INTRODUCTION

During the late 1960s and early 1970s, the U.S. Congress became very concerned about the increasing role played by the President in foreign affairs. On November 7, 1973, and as a mechanism to diminish the power achieved by the Chief Executive in international matters, Congress passed the War Powers Resolution (WPR) over Richard Nixon's veto. The basic aim of the law was to prevent the President from unilaterally introducing the armed forces abroad without congressional authorization. In so doing, Congress sought "to fulfill the intent of the framers of the American Constitution".¹

Since its approval (and even prior to it), the resolution has been condemned by all American Presidents and harshly criticized by several scholars for being unconstitutional. Despite the different attacks, it has survived for almost two decades as the major expression of Congress' perhaps fruitless attempt to recuperate its role in the war-making authority.

In its seventeen years of existence, the WPR has been debated in the Legislature more than ten times but enacted only once (Lebanon). In most of those cases, Congress did little to reaffirm its role in the President's power to deploy armed forces abroad. However, during the Reagan administration the behavior of some sectors of the Legislature, especially within the House, changed substantially. Reagan's hard-line foreign policy provoked a permanent opposition on Capitol Hill, an opposition that used all its resources to restrain the international position of the Republican regime.

In this paper I will try to make a first and a very preliminary approximation of the study of the War Powers Resolution. The basic theme that will guide the following pages is the resolution in relation to three cases that occurred during the Reagan administration: El Salvador, Nicaragua, and Kuwait. The similarity between them is that they are three cases in the history of the resolution in which some sectors of Congress have taken the President to court for noncompliance with the WPR.

Here I will argue that the War Powers Resolution is so deficient in its design that it does not permit Congress to achieve the basic objective of the law: to prevent the President from unilaterally introducing the armed forces abroad without congressional authorization. However, it is a law that can be used to press the Chief Executive to modify his war policy. Thus, to take President Ronald Reagan to court was one among other measures adopted by some members of Congress to condemn the administration's policy toward Central America and the Middle East and an unsuccessful attempt to modify the
predominance of the President in the war-making process.

In brief, I will try to show that some Congressmen have sued the President not because they were unable to attract sufficient votes from colleagues to pass a bill, as some specialists have asserted. Rather, they have taken their case to the courts because they were clearly in opposition to Reagan's foreign policy. In other words, the topic of the War Powers Resolution and the lawsuits against the President for noncompliance with the WPR should be seen as a part of a much broader political debate over Reagan's international policy on Central America and the Middle East.

In order to achieve this goal I will divide this paper into three main sections. In the first, I will present the main features of the WPR, and its basic deficiencies. In the second, I will briefly deal with those cases in which presidential actions in foreign affairs were considered by Congress as possible violations of the resolution, but the Chief Executive was not taken to the court. In the third, I will study the three cases in which some congressmen sued President Reagan and his administration for not obeying the requirements stipulated in the WPR. Finally, I will make some concluding remarks.

THE WAR POWERS RESOLUTION: ITS ORIGINS, PROVISIONS, AND MAIN DEFICIENCIES

The War Powers Resolution was basically a congressional reaction against the growing powers of the President in the conduct of U.S. foreign policy. From the start the resolution provoked a strong debate within the Legislature, dividing Congress into two main fronts; on the one hand, the supporters of the bill, a group of democratic congressmen including Thomas Eagleton, Jacob Javits, and Clement Zablocki; and on the other hand, the main opponents to the law headed by Barry Goldwater. The core of the dispute were the virtues, deficiencies, and constitutionality of the act.

The advocates of the bill considered that the Founding Fathers had been reluctant to grant excessive authority to the Chief Executive, giving the main responsibility for thoughtful policy-making to Congress. These supporters believed that during the twentieth century, the President's war-making power expanded rapidly. Therefore, it was necessary to come back to the principle of collective decision making and deliberation. Thus, Senator Thomas Eagleton claimed that an "orderly balance of power in war-making matters can and must be restored".

The bill's adversaries had two main areas of disagreement. The first was its interpretation of the constitutional prerogative of the President as a Commander-in-Chief. Barry Goldwater, following professor Edward E. Robinson, asserted in 1971 that "the President's power as a Commander-in-Chief of the
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Armed Forces is of greater significance than all of the other powers prescribed by the Constitution”. The war powers of the President were conceived by Goldwater to be almost unlimited.

A practical problem was a second area of concern. Congressmen like Senator Gale McGee believed in the President’s need to retain maximum flexibility in order to deal with ever-changing danger. The resolution could harm a system of power essential to national security.

In all, Goldwater summarized the opposition viewpoint in the following terms: “the legislation known as the War Powers Act is unrealistic, unwise, and unconstitutional... It is disruptive of our entire mutual security system which now safeguards world order. It is totally without any statutory precedent in American history. And in my opinion, it invalidly prohibits the President in the exercise of his Constitutional powers of national defense”.

The negotiation of the law was not an easy task. Several perspectives within the pro-bill group started to conflict. A conservative group headed by the democrat Senator John Stennis began to support the initiative. The endorsement of this faction was important because it cornered the conservative tendency of Goldwater and McGee. However, it was also counter-productive, because it imposed a broad flexibility within the original group in order to retain the backing of Stennis’ faction.

This fact provoked a split between Senator Eagleton and other proponents of the legislation. Thus, the “rift became apparent during the consideration of an amendment proposed by Eagleton that would have made the CIA and other supporters non-military agents of the U.S. government subject to the bill’s provision”. Stennis opposed this measure. Knowing Stennis’ importance for the eventual approval of the bill, Javits and other of the resolution refused to back Eagleton.

When the conference committee between both chambers of Congress was held, the basic disagreement was whether or not to enumerate the President’s emergency powers. This idea, promoted by Senator Eagleton, was categorically rejected by the House. As a result of the intense congressional negotiation among the different perspectives, the bill was moderated in order to obtain the support of the great majority of Congress. The goal was achieved. But the language of the resolution was often ambiguous. In short, Congress sacrificed design and preciseness for support and approval.

Thus, the resolution contains four major provisions. Section 2(c) recognizes that the President has the authority as Commander-in-Chief to “introduce United States Armed Forces into hostilities or situations of imminent hostilities” only in the following instances: 1) by a congressional declaration of war, 2) by a specific statutory authorization, or 3) by a national emergency created by attack upon the United States, its territories, possessions, or its Armed Forces.

Section 3 asserts that the President in any possible instance shall consult with
Congress before introducing armed forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated. Section 4 requires the President to report his actions to Congress within 48 hours, specifying the circumstances that motivate the participation of U.S. Armed Forces, the constitutional and legislative authority under which the introduction took place, and the estimated scope and duration of hostility. Section 5 demands that the President should withdraw the troops within sixty days unless Congress declares war or permanently authorizes the Armed Forces to remain abroad. Such a sixty day period could be extended for not more than an additional thirty days.

Two basic aspects of the War Powers Resolution are particularly weak: the consultation and the reporting provisions.

With respect to the first, the WPR does not define the term “consult.” To consult or not with Congress is a basic decision of the Chief Executive. The President could manipulate this issue in any way he wants. In some situations, as in the case of the Grenada’s invasion, Reagan informed (not consulted) a distinguished group of legislators of his already-taken decision to deploy Armed Forces abroad.8

In other instances, like Carter’s attempt to rescue the American hostages from Iran, the Executive ignored the Legislature, arguing that the operation was an “humanitarian mission”, and not a direct attack against Iran or its peoples.9 In a nutshell, the President decides when and under which circumstances he will give Congress the opportunity to participate in the policy formulation. As Allan Ides has rightly pointed out, “under this section [of the WPR] the dominant law making role remains in the executive branch”.10

The reporting provision also has several deficiencies. For some analysts, an essential problem is that the resolution does not specify which kind of report the President should fill out. Michael J. Glennon believes that a hostile report is only one of the three kinds of reports requested by the resolution and “the other two do not set the clock ticking”. Thus, sections 4(a)(2)11 and 4(a)(3)12 could also require a “hostile” report. Consequently, when Presidents have submitted a report, they have not specified under which of the three requirements the report was presented. As a result, “it is impossible to say whether the sixty-day period had been triggered by any of the reports”.13

In addition to that, section 5(b), which asserts that the President must terminate the use of Armed Forces within sixty days, is clearly contrary to the general aim of the resolution. Under this clause the President, could deploy the Armed Forces without congressional approval, at least for sixty or ninety days.

The invasion of Grenada is a good example to illustrate this point. Ronald Reagan arranged the invasion without adequately consulting Congress. He basically informed five legislators of his decision a few hours before the attack. Several days after the intervention, both chambers of Congress passed resolutions that triggered the sixty-day termination provision. Thus, the War Powers
Resolution was invoked without achieving its basic aim: to prevent the President from unilateral decisions to introduce the Armed Forces abroad without congressional authorization.¹⁴

Although technically under section 5(c) Congress could rescind by concurrent resolution the sixty days granted to the President, it is clear that in practice, when the Armed Forces are deployed, the legislature rarely acts to check the President's action. "Only in the most rare situations", an analyst has asserted, does "Congress successfully challenge the Commander-in-Chief's powers unleashed".¹⁵

This is especially true when the President, as in the case of Grenada, is capable of manipulating the mass media and garnering the support of the majority of the U.S. population. Moreover, in the best case, Congress can act only afterwards. Therefore, in practical terms, and with the clear endorsement of the WPR, the President of the United States could invade any nation with the only requirement to remove the troops in no more than two months. In the final analysis, the resolution legalized what has been the presidential behavior in foreign affairs in the twentieth century.

In short, as Theodore J. Lowi has pointed out, the War Powers Resolution "is in large part a failure".¹⁶ The provision presents so many deficiencies that it neither has improved the role of Congress in the war-making process, nor has it prevented—as their sponsors wished—the President from involving the United States in military operations without congressional approval.

Some congressmen have been trying to enforce the resolution, despite its deficiencies, by using it as a mechanism to restrain the presidential actions in war affairs. This was evident during the Reagan administration. The hard-line policy of the Republican government toward Central America and the Middle East provoked a permanent reaction of some sectors of Congress, especially within the House. In the cases of El Salvador, Nicaragua, and Kuwait, those sectors advised the President of possible violations of the WPR, proposed a resolution invoking the law, or even took the President to court for breaking the provision.

But before analyzing the three cases mentioned above, I would like to comment on those moments in which individual Congressmen did not go to the court. Here my basic aim is to establish a pattern of comparison between cases that resulted in lawsuits, and those that did not.

**CONGRESSIONAL CONCERNS FOR POSSIBLE PRESIDENTIAL VIOLATIONS OF THE WAR POWERS RESOLUTION: WHY DID CONGRESS NOT GO TO COURT?**

Two basic facts can help us explain the reasons behind the rare congressional lawsuits against the President. The first is the length of military engagement
abroad. The second is the unique character of the individual events. Let me briefly review those cases in order to support my assertion.

During the Nixon, Ford, and Carter administrations the most important incidents associated with the War Powers Resolution were short-lived, related with generally successful rescue missions. The first case that involved the provision was the Cyprus evacuation. In July 1974, in the middle of the fight between Greece and Turkey, the U.S. Ambassador to Cyprus requested the evacuation of American citizens caught in a zone of hostility. In just two days the Armed Forces rescued more than five hundred Americans and almost one hundred foreign nationals. No casualties were reported.

Shortly afterwards, Senator Eagleton raised the legislature's main voice of protest. For him, President Nixon had failed to report the introduction of the Armed Forces into Cyprus. The administration's answer to this complaint was conclusive. First, the area where American helicopters landed was not part of the hostile zone. Second, the mission was humanitarian, and third, U.S. forces were unarmed. Although Eagleton was not satisfied with the official response, neither he nor Congress adopted further measures.

During the Ford administration, the WPR was debated in Congress five times (the evacuations from Danang, Cambodia, Phnom Penh, Lebanon, and the Mayaguez rescue mission). Most of the incidents that captured the Legislature's attention were connected with the fall of Indochina. Likewise, all of them were concerned with the evacuations of American citizens and foreign nationals. Four of them happened in 1975 within a short period of time, forty-one days, and were brief in duration, from four hours (Phnom Penh) to eight days (Danang). The last one occurred a year later, and took less than one month to complete.

The congressional reaction to those five cases was very limited. In the Danang evacuation, Representative Zablocki expressed his concern for the Executive's deficiencies in the consultation and reporting provisions. In the Phnom Penh rescue, Senator Jacob Javits adopted a similar position. In both cases the President reported his actions to Congress, diminishing the possibility of legislative protest. This became very clear in the type of congressional objections that focused basically on some aspects of the Administration's interpretation (definition of consultation, etc.) of the law, rather than on the nature of the incident. Likewise, in the Danang incident, President Ford expressed that because Congress was on Easter break, consultation was difficult. Finally, Ford justified his actions under the President's constitutional powers as a Commander-in-Chief.

In the case of Saigon the President did consult Congress, and the U.S. legislators were essentially reluctant to debate the Presidential actions, perhaps because of their desires to break the links with Vietnam. On the other hand, the Mayaguez incident was the most controversial among them. First, because U.S. Armed Forces were directly involved in heavy fire with the Cambodian troops,
the threat of a stronger Cambodian reaction and the development of permanent military hostility between both countries was raised. Second, forty-one Americans died in an attempt to rescue thirty-nine crewmen. Thus, some legislators believed that President's action was hasty and criticized his manner of consultation. In their view, the President informed, but did not consult. Finally, the Lebanon crisis did not raise complaints from Congress. In general terms the legislators accepted presidential behavior, and the WPR was not seriously involved.

The Carter administration was involved with the War Powers Resolution twice. As in the incidents mentioned above, both cases were related with evacuations or rescue missions. The first one is known as the Zaire airlift. The second is the Iran hostages rescue attempt.

In the Zaire case, U.S. Armed Forces participated in the evacuation of Americans from the copper town of Kolwezi and in the transport of aircraft deliveries to Zaire in support of French and Belgian operations. The idea was to assist the Europeans in moving military personnel. U.S. troops were neither introduced in hostile zones, nor equipped for combat. The administration consulted with congressional leaders, but it considered that no report to Congress was required under these circumstances. The first phase of the operation was completed in May 27, 1978. Subsequent flights were conducted in June. Although some congressmen like Representative Gerry E. Studds criticized the President's behavior, in general terms the case found insignificant support for confrontation with the administration.

Carter's attempt to rescue the American hostages from Iran found little opposition in Congress. The strongest voice of protest was that of the chairman of the Foreign Relations Committee, Frank Church, who asserted that the President had violated the resolution by conducting operations without prior notification of Congress. However, perhaps because of the gravity of the situation in Iran Congress did not contradict seriously the presidential decision.

In a nutshell, it is clear from the broad review presented above that Congress is reluctant to confront the Chief Executive when the deployment of the Armed Forces is brief and when the President is able to justify his mission as humanitarian and necessary evacuation. This is especially true when there is an evident rescue mission as in the case of American hostages in Iran. Here the difficulties in U.S.-Iran relations since the fall of the Shah of Iran, and the popular concern for the lives of American hostages, influenced the legislature's attitude. Political situations more than strict adherence to the letter of the WPR seem to shape congressional behavior.

However, during the Reagan administration, the situation changed significantly. The hard-line policy of the Republican regime became the raw material for a constant controversy in Congress about U.S. activities in international affairs. In this regard, the War Powers Resolution was a topic of debate
several times. The deployment of U.S. marines in Lebanon and the invasion of Grenada are especially important for the purposes of this section of the paper.

The first is similar to those cases in which certain legislators sued the President for noncompliance with the resolution. Therefore, it is interesting to try to determine why here some Congressmen did not follow a similar pattern of behavior and take the President to court. In addition to that, Lebanon is the only case in which Congress has invoked the resolution.

Grenada is significant for four reasons. First, it is important because it illustrates that the WPR is a policy tool that can be used only after a military engagement. Second, it is important because it helps us to confirm the idea that when the deployment of U.S. Armed Forces is brief, even in extremist cases like invasions, Congress is less willing to challenge the President. Third, it is significant because Congress almost passed the WPR. Finally, the Grenada case demonstrates how a lawsuit against the President for noncompliance with the resolution should be seen as a part of a more broader political debate over Reagan’s foreign policy.

In the summer of 1982, Israel invaded Lebanon to remove the concentration of many members of the Palestine Liberation Organization (PLO) from Beirut. In August, Israel, the PLO, and the government of Lebanon reached an agreement to evacuate the PLO forces from West Beirut. A part of the accord was that the evacuation would be observed by international forces from Italy, France and the United States. On August 24, President Reagan sent a report to the Speaker of the House and the President Pro Tempore of the Senate relative to the deployment of the Armed Forces in Lebanon. The communication was sent “in accordance that Congress be fully informed on these matters and consistent with the WPR”. U.S. marines reached Beirut on August 25 and left the city on September 10.

However, the hostilities continued in the area, and by the end of September 1,200 marines were back in Beirut. On September 29, Reagan reported to Congress in compliance with the War Powers Resolution, expressing that the Marines would not be engaged in combat. The idea was that the Armed Forces would be there only for a limited period of time.

Since the beginning of U.S. participation in the Multinational Forces in Beirut, Congress manifested its concern for the decision. The first reaction was related to Reagan’s reluctance to include in his first report specific subsections of the resolution. Representative Zablocki asserted that Reagan should include section 4(a)(1). However, the presidential promise that the troops would be in Beirut just for a short period of time restrained the congressional response.

When Reagan presented his second report on September 29, 1982, congressional reaction was stronger. Senators Claiborne Pell and Charles Percy expressed, in a joint letter to the President, their opinion that section 4(a)(1) was applicable. Percy went further asserting that the sixty-day clock would apply
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whether or not the President formally invoked the said section. The administration did not seek any authorization and Congress did not press the Chief Executive.

In early 1983 the situation deteriorated in Beirut. As a result, U.S. Forces were involved in several confrontations provoking, in March, the death of five Marines. Members of Congress expressed their concern that the Armed Forces were in a situation where the hostilities were imminent but most of them were reluctant to press the government at the time that the President was promoting negotiations between Lebanon and Israeli on the withdrawal of Israeli on forces from Lebanon.

Parallel to this, in January 1983, the Reagan administration requested emergency supplementary economic assistance for Lebanon for the purpose of reconstructing the country. By June 1983, Congress enacted the Lebanon Emergency Act, which in addition to approved significant economic and military assistance, validated the presence of U.S. troops, but required congressional authorization for any substantial expansion in their number or role. The texts also specified that section 4(b) of the act would not modify, limit, or suppress the provisions of the WPR.

This bill was especially important for two reasons. First, it expressed the support of Congress for the presence and goals of U.S. Marines as a part of the Multinational Forces in Lebanon, at least at this stage of the deployment's history. Second, it indirectly gave Congress the possibility to achieve a basic goal of the WPR: to be involved in the war-making process.

Later on, during the summer of 1983, some Americans died in military confrontations in Lebanon, and Congress became very concerned about the increasing Marine involvement. As a result, some congressmen promoted the idea that Reagan should report under the WPR, with the sixty-day clock starting on August 29. Others expressed that the troops should be withdrawn from Lebanon.

Under pressure, the administration initiated a permanent dialogue with Congress that resulted in an agreement that authorized the Marines to remain in Lebanon an additional 18 months. In this accord, the commitment of the troops would be a joint executive-legislative decision using the WPR as a vehicle to achieve such a collective decision. The measure required that the President report to Congress on the status of the Armed Forces in Lebanon at least every three months. Representative Zablocki later called the resolution a balance between the need for Presidential flexibility and congressional control.

The discussions about the main features of the agreement were not absent in Congress. Several legislators like Lloyd Bensten expressed that 18 months was a "very long time to authorize our Marines to be involved in war." Others in the House proposed resolutions to cut all funds for U.S. Forces in Lebanon 90 days after August 29, unless the President reported to Congress under the terms
of section 4(a)(1) or had certified to Congress that a cease-fire was in effect. Although the resolution had the support of 146 Democrats and 12 Republicans it was defeated by 154 Republicans and 118 Democrats.

Finally, on September 29, Congress, for the first time in the history of the War Powers Resolution, enacted the law. The House adopted its version on September 28, by 270 votes to 161 and the Senate the next day by 54 votes to 46. The President signed the Multinational Forces in Lebanon Resolution on October 12, 1983.

However, in his signing statement Reagan expressed his discomfort with some of the assertions of the resolution and asserted that in signing the law "I do not and cannot cede any of the authorities vested in me under the constitution as President and as a Commander-in-Chief... Nor should my signing be viewed as any acknowledgment that the President's constitutional authority can be impermissibly infringed by statute, that congressional authorization would be required if and when the period specified in section 5(b) of the War Powers Resolution might be deemed to have been triggered and the period had expired on section 6 of the Multinational Forces in Lebanon Resolution may be interpreted to revise the President's constitutional authority to deploy United States Armed Forces".

Less than a month after the enactment of the resolution a bomb in the Marines headquarters killed 241 persons. The attack reopened the congressional debate over American Multinational Forces in Lebanon, with a global tendency against the presence of U.S. Marines in Beirut. Thus, Speaker O'Neill expressed at the beginning of January 1983 that unless rapid progress was made towards a diplomatic solution, he, together with other members of Congress, would reconsider the legislative authorization of Marines in Lebanon.

In a similar vein, Democrats in the House drafted a non binding concurrent resolution criticising the Administration's policy and urging a prompt and orderly withdrawal of U.S Armed Forces. The resolution had very important political effects. The Reagan administration became concerned with the growing congressional hostility toward its policy. Thus, with increasing domestic opposition, and a presidential election in process, President Reagan decided to pull the marines in early February 1984.

The participation of the United States in the Multinational Forces in Lebanon differs greatly in relation with the cases commented above. In this case, there was no rescue mission of American citizens in danger. The presence of the Marines in the area lasted for a long period of time, and the deployment of U.S. troops became the most significant since the Vietnam war. Therefore, apparently, this lasted a good case to restrain Reagan's foreign policy or even to sue the President. The obvious question is why Congress did not go to the court?

The answer is multiple. First, Congress did not perceive the problem as a military issue, but as a peace-effort deployment. This consideration was rein-
forced with the low profile of the Armed Forces especially during its first year of deployment. This fact was important because Congress could challenge presidential behavior when there was an involvement or threat of permanent participation in international conflagration, but not when the Armed Forces were perceived as fulfilling a pacification task. In this regard, it is interesting to observe that some Representatives who sued the President for noncompliance with the resolution in the cases of El Salvador and Nicaragua (Dymally and Weiss) supported economic aid to Lebanon and endorsed the enactment of the War Power Resolution.

Second, it is more difficult to challenge the President when other countries are involved in the same cause. The participation of France and Italy represented a sort of domestic and international legitimization of American activities abroad. Third, Reagan reported permanently to Congress about the American activities in Beirut. These reports were done in compliance with the WPR. Although the presidential notification was deficient, the reports manifested a certain tendency of Reagan to respect the resolution. In this situation, it would have been very difficult to present an argument of presidential noncompliance with the resolution.

In addition, the Lebanon Emergency Assistant Act was a law that involved Congress in the decision-making process. This has been one of the Legislature's most important claims since the approval of the WPR. In other words, a significant aim of the resolution was achieved indirectly. In brief, the peculiarities of this case make clear that not all military deployment represents an issue that could move Congress to challenge the President's activities abroad.

The U.S. invasion of Grenada is a very interesting case for the purpose of this section of the paper. Grenada started to capture the attention of the U.S. politicians in 1979. On March 13, revolutionary forces overthrew the military dictatorship of Sir Eric Gairy. From that time on, the New Jewel Party headed by Prime Minister Maurice Bishop developed important contacts with progressive and nationalist governments of Africa and Asia, became part of the Non-Aligned Movement and established close relations with Cuba. Thus, Grenada's new policy became an important concern for the American authorities, especially after the arrival of Ronald Reagan to the White House.

In the original design of the Reagan's policy toward Latin America, the Caribbean was considered a very strategic and commercial artery for the United States. In this regard, Grenada was viewed as a part of the East-West confrontation and as a clear manifestation of the penetration of the communist forces in the Western Hemisphere. For the architects of the Reagan policy, Grenada—especially for its contacts with Cuba—became a dangerous place with serious implications for U.S. security interests.

Before the U.S. invasion of Grenada, congressional considerations about the situation in the island were not absent. As early as July 14, 1981, Representative
Mervyn M. Dymally expressed that the United States should adopt a "more conciliatory stance toward the Government of Grenada, including accreditation of the Grenadian Ambassador-designee to the United States".32

From March 12 through to the 15th of 1982, a group of representatives visited the island and had interviews with Prime Minister Bishop and other members of his cabinet. Three months later, on June 15, 1982, the Subcommittee of Inter-American Affairs of the House of Representatives held a hearing to analyze U.S. policy towards Grenada. During the session several congressmen expressed their animosity towards Reagan's policy regarding Grenada.33

However, on October 25, 1983 (two days after the bombing of Marines headquarters in Lebanon) the Reagan administration decided to invade Grenada. The President justified his decision by arguing 1) that the lives of U.S. citizens were in danger; 2) that further chaos must be forestalled; 3) that the U.S. should help restore democratic institutions on the island.

Although some congressmen were notified of the invasion a few hours before it took place, Congress was officially informed on October 25. On that day, the President sent a letter to the Speaker of the House and the President Pro Tempore of the Senate. In this communication, Reagan described briefly the situation in Grenada. The President also asserted that he was providing this report in "accordance with my desire that the Congress be informed on this matter and consistent with the War Powers Resolution". Finally, he expressed that the deployment of U.S. Armed Forces was taken under his "constitutional authority in respect of the conduct of foreign relations and as a Commander-in-Chief of the United States Armed Forces."34

The deployment of the American troops in Grenada provoked different reactions in Congress. Senators like Strom Thurmond and Jesse Helms immediately supported the President's decision.35 Other congressmen like Dante B. Fascell supported the action taken by Reagan but expressed their concern over "the lack of prior consultation with Congress pursuant to the War Powers Resolution".36 Finally, legislators like representative Weiss condemned the invasion as "immoral, illegal, and unconstitutional".37

However, despite the divergences of opinion within the Legislature, Congress invoked the War Powers Resolution. On October 26, Representative Clement J. Zablocki introduced a resolution declaring that Congress "determines that the requirement of section 4(a)(1) of the War Powers Resolution became operative on October 25, 1983 when the United States Forces were introduced to in Grenada". The measure was approved by the full House by 403 votes to 23 on November 1.38

In the Senate, Gary Hart sent a similar resolution on October 26 which was not considered by the Foreign Relations Committee to which it was referred. Two days later, Hart reintroduced the resolution but as an amendment to the debt-limiting bill then pending. Hart's amendment pointed out the necessity of
including section 4(a)(1) of the WPR (the idea that the Armed Forces were introduced in situation of hostilities), and the notion also included in the WPR that the President should terminate any use of Armed Forces in Grenada unless Congress authorized the contrary. Hart's amendment was adopted by a bipartisan vote of 64 votes to 20. However, despite the apparent consensus between the House and the Senate, neither measure reached the President's desk.

Reagan's impressive manipulation of the information and the mass media, as well as the success of the operation, soon produced widespread congressional support. Thus, for example, Senator Joseph R. Biden Jr., a permanent critic of Reagan's foreign policy, asserted on October 28 that he was "ready to sign on in support of the invasion-conditioned only on the [President's] assertion that he doesn't plan on staying there beyond the restoration of peace". In a similar vein, Tip O'Neill asserted that "sending American forces in to combat was justified under these particular circumstances".

However, not everybody in Congress was satisfied with the different measures adopted by the Legislature. Considering that Congress should do more, several representatives took a more radical position. Two days after the approval of the resolution in the House, representative Dymally and sixteen colleagues introduced a concurrent resolution that "expressed the sense of Congress that the United States should recognize the right of the people of Grenada to territorial integrity, calling upon the President immediately to remove the United States Armed Forces from Grenada". The measure died in the House Committee of Foreign Affairs. On November 10, Representative Theodore S. Weiss introduced a resolution calling for the impeachment of Ronald Reagan for the "high crime or misdemeanor of ordering the invasion of Grenada in violation of the Constitution of the United States, and other high crimes and misdemeanors ancillary thereto." The measure too died in the House Judiciary Committee.

Finally, eleven members of Congress decided to sue the President for violation of the War Power's Clause of the Constitution that specifies that Congress has the right to declare war. The court dismissed the case by invoking the doctrine of "circumscribed equitable discretion". The court argued that Congress had other mechanisms, such as the War Powers Resolution, to remedy the wrongfulness of the President's action.

This case illustrates very interesting phenomena. First, most legislators supported the President's decision constrained by the political circumstance of the time. Reagan superbly manipulated the available information and the mass media. As a result, the great majority of U.S. population found it easier to approve of the invasion. When the population supports presidential actions, Congress has difficulty challenging the Chief Executive. In this situation, the constitutional prerogatives are almost irrelevant. Politics, not constitutional theory, is what shapes congressional behavior. "The move is popular," asserted
Senator Daniel P. Moynihan a few days after the invasion, "and therefore there's no disposition in the Senate to be opposed to it".\footnote{\textsuperscript{41}}

Second, Grenada shows that the WPR had little or no effect on the President's unilateral decision to invade Grenada. The War Powers Resolution is an "afterthought" provision, and the President has the flexibility to invade any country at least for sixty days. Likewise, this case reinforces the notion that when the President is able to act quickly, even in extreme situations like invasions, Congress is less willing to confront the Chief Executive.

Finally, the invasion of Grenada is an excellent example of how the suit against the President for noncompliance with the WPR can be seen as a part of a more ample political debate over Reagan's foreign policy. In this case, some legislators went to the court to oppose U.S. military intervention in Grenada. However, because both chambers of Congress invoked the WPR they could not use the provision as a mechanism to manifest their rejection of Reagan's invasion. Therefore, they applied the argument of President's violation of the right of Congress to declare war. In other words, the basic aim of the lawsuit was to oppose Reagan's foreign policy utilizing the institutional resource available to them.

Having described some of the most relevant cases in which the War Powers Resolution was a theme of debate in Congress but which did not result in the lawsuit against the President, let me turn to those cases in which some congressmen thought that it was necessary to sue the Chief Executive.

**EL SALVADOR, NICARAGUA, AND KUWAIT: THE LAWSUIT AGAINST PRESIDENT REAGAN FOR NONCOMPLIANCE WITH THE WAR POWERS RESOLUTION**

After Ronald Reagan's victory in 1980, the new President rejected the policy of detente and came to revitalize the notion of "confrontation of civilizations" characteristic of the vision of the whole Cold War era. The idea, was thus to return to a global approach emphasizing the competition between the Western "free world" represented by the United States and the communist bloc represented by the Soviet Union.

Under this general scheme, the Republican administration saw the Third World as an arena of East-West confrontation. Central America, the U.S. strategic traditional "back yard" and historical area of influence in the Western Hemisphere became a U.S. security concern and a stage for the U.S. global strategy of containing Soviet expansionism. "Americans are under attack," asserted the Committee of Santa Fe in 1980, "because Latin America, the traditional alliance partner of the United States, is being penetrated by Soviet power".\footnote{\textsuperscript{45}}

Something similar happened with the countries of the Persian Gulf. In this zone, the Administration manifested the aforementioned tendency and proposed
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a major increase in military spending to confront the Soviet threat in the area and to ensure a steady reliable supply of oil.

This basic foreign policy approach divided Congress in two basic fronts. Some congressmen supported Reagan and believed the threat of Soviet expansionism to be real. Others considered that the presidential diagnosis was simplistic and dangerous because it might involve the nation in permanent confrontations with other countries.

In the Senate the correlation of forces was favorable to the President’s initiatives. The 1980 election brought a Republican majority to this chamber, after twenty-six years of Democratic control. Moreover, in the election, important liberal leaders like Frank Church, Birch Bayh, John Culver, and George McGovern lost their seats, and the most important committees became controlled by ultraconservative Senators. It is also interesting to note that the chair of the Subcommittee for the Western Hemisphere was Jesse Helms, one of the main leaders of the New Right.

The Democrats continued holding a solid majority in the House. However, the party was divided. On the one hand, a substantial number of representatives permanently supported the presidential initiatives. After the election of 1980, forty Democrats formed, the Democratic Conservative Forum whose aim was to promote conservative policies. On the other hand, the leadership in the House as a whole basically opposed the President and these conservative forces, although with limited success. In all, the liberal tendency was not necessarily the predominant force in Capitol Hill.

This situation provoked a permanent debate within the Legislature, a debate in which the anti-Reagan front used all its resources to stop the administration’s involvement in Central America and the Persian Gulf. In the following pages I will comment separately on the cases of El Salvador, Nicaragua, and Kuwait.

El Salvador

El Salvador was the most important “test-case” of Reagan's contentious policy in Central America. When the former Governor of California won the Presidency he had a clear objective in mind: to stop, at any cost, the triumph of revolutionary forces in El Salvador. To achieve this goal, one of his first measures was to promote the restoration of military and economic aid and to increase the number of U.S. military advisors in this country.

As could be expected, the initiative divided U.S. Congress. In the House, Gerry Studds introduced a resolution prohibiting military aid and sales to El Salvador, and in the Senate, Edward Kennedy proceeded in a similar vein. At the same time, representative Michael Lowry submitted a resolution to support a negotiated settlement of the conflict.
When the Foreign Affairs Committee considered the bill to restrict military aid to El Salvador on April 29, 1981, twenty-six legislators were in favor of the cut and only seven against. When the same bill was considered in the Senate, on September 23, this chamber voted 54 in favor and 42 against. The outcome in the Senate was more significant, considering that this chamber was dominated by Republicans.

Parallel to this debate, a group of congressmen started to oppose the administration's idea to increase U.S. military advisors in El Salvador. The measure was seen as analogous to the beginning of U.S. involvement in Vietnam. "Isn't this creating a situation", asserted congressman Clarence D. Long, "in which we may be doing what we did in Vietnam?" In a similar vein, the advocates of this tendency expressed their concern for possible violations of the War Powers Resolution.

On February 25, 1981, Richard L. Ottinger, Democratic Representative from New York, sent a letter to the members of the House. In this communication, Ottinger tried to persuade his colleagues to sign a telegram to the President, manifesting their protest against the decision to increase military personnel in El Salvador. He expressed that it would be in America's best interest to "encourage a dialogue between opposition forces and the junta". And, he pointed out that it was important to advise the President that any "involvement of military personnel in hostilities in El Salvador requires compliance with the War Powers Resolution". By March 3, Ottinger had gained the support of 48 members.

In the meantime, the Republican administration continued with its pro-military policy. On March 2, and perhaps challenging the opposition within Congress, Reagan sent $20 million in military aid to El Salvador, using emergency powers not subject to congressional approval.

On March 4, the day after the telegram was sent to the President, Ottinger introduced a resolution "calling on President Reagan to obey the law and honor of the War Powers Resolution by reporting to Congress justifying his decision to send military advisors to El Salvador". Ottinger's resolution was supported by thirty-seven members of the House.

What is very interesting for the purpose of this paper is that, in the final analysis, the aim of Ottinger's resolution was a moderate one. The representative was aware that his "resolution would not stop the President from sending military advisors to El Salvador". Therefore, his basic idea was to "involve Congress in the decision and insure that we do not, by silent acquiescence, allow this nation to slip into the quagmire of another Vietnam". In certain sense, was not challenging the President. Rather, he was asking just for participation in the decision-making process.

In the Senate, several members were also worried about the same issue. John Glenn asserted that the Administration had not only "failed to consult the
Senate adequately but might also be in violation of the WPR. On March 17, Thomas Eagleton called for consultation and reporting in full compliance with the resolution.\textsuperscript{51}

The Administration’s response was conclusive: “the War Powers Resolution does not apply to the present situation in El Salvador”. Through the Department of State, the Reagan administration asserted that U.S. personnel were not introduced “into hostilities or a situation where their involvement in hostilities was imminent”. In a similar vein, this office claimed that personnel were not equipped for combat and that they carried only personal sidearms to use in self-defense. Finally, military personnel were not acting as combat advisors and did not accompany Salvadoran forces in combat.\textsuperscript{52}

Resolved to defend their viewpoints, twenty-nine members of the House of Representatives led by George W. Crockett filed a lawsuit against President Reagan. The charges were that the supplying of monetary aid and military equipment violated the War Powers Act of the Constitution, the War Powers Resolution, and the Foreign Assistance Act. A few days later a group of 16 senators and 13 representatives, highly associated with the extreme right of the Republican party,\textsuperscript{53} filed a countersuit expressing that the judicial branch should not intervene in this case because legislators could vote to terminate the military assistance.

In his briefs, Crockett and colleagues asserted that the Salvadoran government was engaged in a civil war, and that the U.S. military personnel were taking part in coordinating the war efforts and assisting in planning specific operations against the Frente Farabundo Martí de Liberación Nacional (FMLN). They also considered that the “U.S. Armed Forces were fighting side by side with government troops battling against the FMLN”. Likewise, they cited a General Accounting Office report that U.S. military personnel were drawing “hostile fire pay, and that a tentative Pentagon ruling that all of El Salvador qualified as a hostile fire area was reversed for (policy reasons), possibly to avoid the necessity of reporting to Congress under the WPR”.\textsuperscript{54}

The Republican administration responded by asserting that the “sole function of American forces was that of training Salvadoran military personnel, and had never served as advisors, accompanied military units on combat operations, or given those units advice on or worked with them to plan or coordinate the actual performance of offensive or defensive combat operations”.\textsuperscript{55} Finally, court dismissed the case as a nonjusticiable political question.

Two facts seem to be clear in this case. First, that despite the conservative environment in Congress, the Legislature was, at first glance, reluctant to accept a long-term U.S. involvement in El Salvador. It is in this sense that the cuts in financial assistance could be understood, at least for a short period of time. However, the majority in Congress was not willing to corner the President. The reason: the low profile of U.S. forces or military personnel in El Salvador.
When the American forces are not openly involved in long-term conflagration, it is more likely that Congress will adopt a flexible position.

Second, the anti-Reagan sectors of Congress went to court after they had attempted to invoke other institutional measures to restrain the President's foreign policy. Although they won very important battles, perhaps more important than calling for the implementation of the WPR, they could not stop Reagan's hard-line policy toward El Salvador. Consequently, they turned to the court as an additional resource to stop the Administration's policy.

**Nicaragua**

Nicaragua was the second most important case for the Republican government. Since the beginning of the Reagan administration there was an intense debate about the best way to face the Nicaraguan issue. On the one hand, there were several people that supported a program of covert operations with the aim of overthrowing the Sandinist government. On the other hand, some officials from the Department of State thought that the main objective of the United States should be to stop the flow of arms from Nicaragua to the Salvadorean guerrilla movement.

The Reagan administration approached the Nicaraguan problem from two main fronts, with economic pressure and with the support of counterrevolutionary forces. A few days after Reagan assumed power his government interrupted the payment of economic aid to Nicaragua and just three months later, Reagan "blocked the remaining $15 million of the $75 million in foreign aid approved by the previous administration; in April it canceled a $10 million credit line for the purchase of wheat and in September, it suspended a $7 million aid loan".  

Washington also applied economic pressures through its influence in multinational institutions like the International Monetary Fund, the World Bank and the Inter-American Development Bank (IDB). In this regard, in December 1981, the U.S. representative to the IDB vetoed $500 million for the development of cooperatives in the farming sector of Nicaragua. From 1981 to 1984, the United States blocked an “estimated $200 million in non-commercial development credits to Nicaragua and pressured private banks to withhold new loans as well”.

In 1981, in relation to the counterrevolutionary force, President Reagan authorized the CIA to train and give financial aid and logistical support to a counterrevolutionary force already based in Honduras, just across the border from Nicaragua. The official aim of backing the "contras" was to prevent the flow of arms from Nicaragua to guerrilla movements in other countries.

The support of the economic blockade as well as the "contras" found an important opposition within Congress. In February 1981, after travelling in Central America, Representative Gerry Studds asserted that the United States
must be “objective, patient, and restrained in its policy toward Nicaragua”. He
considered that if Congress does not permit the aid program, U.S.-Nicaragua
relations would become yet more complicated. He believed that it would be a
mistake to consider Nicaragua a lost cause, expressing that the disagreements
between both countries should be resolved on the basis of mutual respect, if not
total trust.50

The support of the counterrevolutionary forces became a very controversial
issue in the Legislature. In December 1981, Representative Edward Boland sent
a letter to CIA Director William J. Casey expressing concern about “the number
and tactics of the insurgents to be supported, whether these insurgents would
be under U.S. control and the possibilities of military clashes between Nicaragua
and Honduras”.50 Later on, in early 1982, Representative Mervyn M. Dymally,
expressed his concerned that the United States was conducting covert military
and paramilitary operations against Nicaragua.51

By that time, a considerable opposition was evident in the House, especially
in the Intelligence Committee. On April 1982, the Committee adopted a secret
annex to the CIA’s founding bill that legally restricted the scope of CIA activities
to interdict arms and explicitly prohibited the use of U.S. funds to overthrow
the Sandinist government.62 During the following month, the press broadly
reported the activities of the “contras” and the economic and military support
offered by the United States.63 Under this political backdrop, Congress enacted,
on December 1982, the first Boland Amendment, which prohibited U.S. aid to
military groups for the purpose of overthrowing the Nicaraguan regime.

The Boland Amendment had little impact on the Administration’s policy.
Important officials continued criticizing the Nicaraguan government, refusing
to refer to American support of the “contras”. On April 12, 1983, Thomas Enders,
Assistant Secretary for Inter-American Affairs, harshly condemned the
Nicaraguan Government. In his statement before the Senate Committee on
Foreign Affairs, he asserted that hundreds of Cubans and Soviet advisors were
in that country, that the Sandinists were supplying arms and training Sal-
vadorean revolutionary forces. Additionally he refused to talk openly about U.S.
covert operation in Nicaragua.64

Three days later, Secretary Shultz made similar declarations.65 And on April
27, Reagan continued these rhetorical attacks. Before a Joint Session of Con-
gress, the President asserted that the “government of Nicaragua has imposed a
new dictatorship”. Likewise, he called many members of the opposition (read
“contras”) “anti-Somoza heroes” and asserted that the United States was not
trying to overthrow the Sandinists. “Our interest [in Nicaragua]”, he concluded,
“is to ensure that it does not infect its neighbors through the export of subversion
and violence”.66

As a result of this policy, several members of Congress began, in 1983, to
assert that the Administration had violated the Boland Amendment.67 In April,
the House Foreign Affairs Subcommittee on the Western Hemisphere voted to ban any U.S. covert operation against Nicaragua.\(^6\) On June 6 and 7, the House Foreign Affairs Committee approved by 20 votes to 14 a bill that would end the Reagan administration’s now public covert action.\(^6\) Finally, in July the House passed a “bill introduced by congressmen Boland and Zablocki to prohibit United States support for the “military or paramilitary operations in Nicaragua for fiscal year 1983-1984”.”\(^7\)

The Senate had a different position. In May, Senator Goldwater introduced a bill in the Intelligence Committee that contained a provision that would allow President Reagan to continue the covert action through September. The bill was approved on May 6.\(^7\)

Thus, by July 1983, it was clear that the House was in favor of restraining U.S. covert operations and the Senate more willing to back the President. Against this political backdrop, on July 20, twelve members of Congress, twelve citizens of Nicaragua, and two residents of the state of Florida sued the President and other public officials. The charges: violation of the War Powers Resolution, the National Security Act, and the Boland Amendment. The court dismissed the case as a nonjusticiable political question.\(^7\)

Two basic conclusions can be drawn from this case. First, as with the case of El Salvador, Congress is more reluctant to accept long-term involvement of the U.S. Armed Forces abroad. The difference with the case of El Salvador is that Reagan was involved in explicit low-intensity warfare. Here Congress is even more opposed to supporting the Chief Executive. This is certainly evident if we extend our analysis over a longer period of time. It is only necessary to remember categorical condemnations of the ultraconservative Senator Goldwater after the mining of Nicaragua’s harbors, or the scandal around the Iran-Contra affair.

Second, and perhaps even more interesting for the purpose of this paper, is that the War Powers Resolution was never invoked by the Legislature. As far as I know, from 1981 to 1983, no member of Congress introduced a resolution calling for the implementation of the resolution. The first time that the law was mentioned was in the legal action against the President. It is clear, then, that the said law was used only as a tool to stop Reagan's policy towards Nicaragua.

Kuwait

As far back as the 1980 presidential campaign, Ronald Reagan had considered the revolution in Iran, the hostage crisis, and the Soviet invasion of Afghanistan to be clear manifestations of the deterioration of U.S. presence in the Middle East. He, therefore, began his government fully committed to rebuilding the American image in the region.

Perceiving the area as a zone of East-West conflict the Reagan administration
was very concerned with the Iran-Iraq war, terrorism, the security of oil-producing states in the area, etc. In this regard, the President promised an important increase in military spending as a way to face the Soviet threat. It is in this sense, why we can understand why the first measure adopted by the Chief Executive in the Middle East was the sale of the AWACS to Saudi Arabia.

By the time that the government of Kuwait proposed to the United States reflagging of its oil tankers, the President Reagan had lost a couple of battles with Congress in relation to the sale of arms to the Middle East. In March 1986 the Administration was forced to withdraw its program to sell weapons to Jordan because of strong congressional opposition. By May of the same year, Reagan’s plan to sell missiles to Saudi Arabia were rejected by both chambers of Congress. This situation, together with the beginning of the Iran-Contra affair in October 1986, marked both a serious deterioration of the American position in the region and growing congressional opposition to the President’s military policy in the Middle East.

The Kuwaiti request came as a result of the seven years’ confrontation between Iraq and Iran. Kuwait felt threatened by an Iranian attack on its oil tankers, and in December 1986 requested Soviet and American protection of its ships. The Soviets soon agreed to safeguard three oil tankers. The notice was received with consternation by U.S. officials, who thought that the Soviet Union could take this opportunity to spread its influence in the region. This fear, together with the American desire to halt Iranian aggression toward conservative monarchies in the area and to ensure the free flow of oil through the Gulf, motivated the Reagan Administration to propose, at the beginning of 1987, to re-register Kuwaiti tankers as American ships.

The plan did not capture the attention of Congress until the Iraqi attack on the U.S.S. Stark. The death of thirty-seven crewmen motivated the Legislature to reevaluate the American presence in the Persian Gulf and the risks of participating in the reflagging of Kuwait’s tankers. Thus, some legislators began to criticize the Administration’s absence of proper consultation with Congress in a mission with high risks of arms conflagration. Thus, senator Robert Byrd argued on May, 1987, that escorting Kuwaiti ships clearly called for a formal report to Congress under the War Powers Act.

In a similar vein, on May 21, the Senate approved 91 votes to 5 an amendment to the Fiscal Year 1987 budget that would ban the reflagging of Kuwaiti tanks until the Administration renders a report regarding the security of U.S. forces in the region. Before the vote, Senator Robert Dole asserted that it was necessary to define American policy in the area before making commitments with Kuwait. Likewise, he thought the President should report permanently to the Legislature about events in the zone. By the same token, senator Sasser expressed that the Stark attack was an important lesson for the United States. Therefore it was necessary not to “bind into an agreement an issue that could cost more
American lives. We must take time to carefully assess the situation, to measure our interests and to prepare for the contingencies.”

The Administration’s response was mixed. It agreed to provide the required information to Congress, but it refused to recognize the structures of the WPR. The reasons were clearly expressed by Richard Murphy, assistant Secretary of the Department of State before the Committee on Foreign Affairs. On May 19, Murphy asserted that “we never invoked the resolution in case of an unprovoked isolated incident... we do not see that the War Powers Resolution is triggered by the attack on U.S.S. Stark”.

During July, both chambers tried to implement some measures to dissuade President Reagan from providing American naval escort to Kuwaiti ships. On July 8, the House failed by 283 votes to 126 to pass a resolution presented by Charles Bennett from Florida to forbid reflagging. However, during the same session, the House approved by 222 votes to 184 an amendment to the annual Coast Guard authorization bill to delay the reflagging for three months.

According to Mike Lowry, the amendment’s sponsor, the idea was not to confront the President, but, as congressman Dante Fascell (co-sponsor of the measure) asserted, “to develop a comprehensive coordinated approach to the defense of the Persian Gulf as an alternative to the ad hoc, poorly defined and dangerous policy of reflagging”.

The Senate proceeded in a similar fashion. On July 9, it began considering an amendment introduced by Dale Bumpers to a trade bill to stop the Administration’s reflagging program for ninety days. Voting 57-42, the Senate fell three votes short of the sixty needed to end the Republican filibuster. Six days later, the same measure was re-evaluated. On this occasion the outcome was 54 votes to 44. A day before, the administration announced to some leaders of Congress that the escorting would begin on July 22.

The reflagging began on July 21. Three days later, in the first American escort, the ship Bridgeton was seriously damaged by a mine. The incident was followed by other casualties, reopening the congressional debate over the plan. In the Senate Robert Byrd asserted: “the time is coming for us to pull the plug on this operation and put end to being jerked around by the government of Kuwait”. In the House, the opponents of reflagging idea began to analyze the possibilities of turning to the court to stop the President’s program.

On July 30, Representative Mike Lowry announced that he and other legislators would sue the President to force him to report to Congress under section 4(a)(1) of the War Powers Resolution. For Lowry, the American forces were in imminent hostilities, and “the President has refused to conform with the clear requirement of the law. Given the President’s refusal and the fact that Senate Republicans have used the filibuster to block all legislation relating to the administration’s Persians Gulf policy, our only recourse is the court.” A few days later, the lawsuit was signed by 110 Representatives and 3 Senators. (In
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an amendment compliant filed on September 29, the three Senators withdrew their support. The court dismissed the case and held that “constraints of equitable discretion and political question doctrine made exercise of jurisdiction inappropriate.”

Several conclusions could be drawn from this case. First, that the amendment adopted by the House to delay the reflagging for three months was a moderate measure. It is interesting to observe that Lowry and Fascell, sponsor and co-sponsor of the idea, voted against the Bennett resolution which was clearly a more extreme measure. This fact seems to highlight that Congress in general and the House in particular were not challenging the President but basically asking for a more responsive and elaborate decision about Reagan's reflagging program as well as for participation in the decision-making process. However, Reagan permanently denied the congressional involvement.

Finally, at first glance, the reflagging of Kuwaiti tankers is certainly the case that seems to prove Fisher's hypothesis that some legislators go to court because they are unable to pass a bill. However, a more careful observation seems to relativize this proposition. First, the administration had lost important initiatives with Congress with regard to its military Middle East policy, initiatives that perhaps were more important than the enactment or not of the WPR.

Furthermore, if we forget the arms sale issue and concentrate our analysis on the peculiarities of the reflagging policy in relation with the WPR, this case offers new insights to Fisher's assertion. Thus, contrary to Crockett v. Reagan—the Salvadorean case used by Fisher to prove his hypothesis—, here the people that sued the President were the winners, at least in the House of Representatives. This is an important difference, because it shows us that this was a confrontation between both chambers of Congress rather than a conflict within one of them. The idea is reinforced if we observe that the judicial action was fundamentally taken by the Representatives. In the best case, confrontation between both branches and not within a single one could also provoke a lawsuit against the President.

In a similar vein, it seems feasible to assert that a legal action against the President could be the result of the differences in structure and ideological composition of both chambers of the Legislature. The congressional dispute of passing or rejecting a bill could be just the external face of a more profound problem characterized by these divergencies.

FINAL CONSIDERATIONS

Throughout this paper I have tried to make a preliminary reading of the War Powers Resolution in relation with three cases in which some congressmen sued the President for noncompliance with the Resolution.
In my analysis I have pointed out that the resolution is so deficient in design that it has not permitted Congress to prevent the President's unilateral decision to introduce the Armed Forces abroad without congressional authorization. Furthermore, contrary to the general spirit of the law, the provision has legitimized what has been traditional presidential behavior in foreign and military policy, especially during the twentieth century. Modern American presidents have been constantly involved in war-affairs, ultimately determining when to deploy the Armed Forces abroad. Presidential energy more than congressional deliberation is what has characterized American history in international military affairs.

I have also rejected Louis Fisher's idea that some legislators have taken the President to court because they were unable to pass a bill. I have suggested that in order to understand this topic, it is necessary to adopt a broader perspective in which suing the President should be seen as a part of a global political debate over Reagan's foreign policy toward Central American and the Middle East. In this regard, the three cases studied in this paper have shown us that before taking the President to court, Congress manifested its opposition to Reagan's policy by adopting several measures, perhaps more important than invoking the War Powers Resolution.

In particular, the Nicaraguan case raises serious questions about Fisher's approach to this theme. Here not a single legislator attempted to invoke the WPR. The applicability of the provision was never a topic of debate in the Legislature. The first time that the law was mentioned was in the legal action against the President. The resolution, thus, was only an instrument, a tool to support the suit against the Chief Executive. Fisher's argument falls short in accounting for this case.

Likewise, I have asserted that before the arrival of Ronald Reagan to the White House, the great majority of the cases in which the resolution was debated in Congress were short-lived incidents relating to rescue missions. In most of those incidents, the Legislature did not take a confrontational position with the Administration. This fact reveals that Congress is reluctant to confront the Chief Executive when the deployment of the Armed Forces is brief, and the President is able to justify the mission as a humanitarian and necessary evacuation. However, when there is a long-term involvement or a threat of permanent military confrontation abroad, Congress is more reluctant to accept presidential military initiatives.

In this regard, the Reagan administration marked a watershed in the history of the resolution. The hard-line policy of the Republican government in foreign affairs caused a strong congressional reaction. When the Chief Executive deviates from the main stream of the U.S. ideological spectrum (centrist liberalism), in this case presenting an ultraconservative position, it is possible to expect stronger congressional opposition, at least from the most radical
sectors of this branch. Perhaps this is why congressional lawsuits against the President for violation of the WPR have happened during the Reagan administration, and two among them were related to Reagan's foreign policy toward Central America, an area in which the Republican government manifested one of its stronger positions.

In addition, it is interesting to observe that the suit against the President was a measure taken by the House. Only the Kuwaiti case registered the involvement of two Senators, who in the amendment complaint withdrew their participation. This fact can be explained two ways; politically and structurally. Ideologically, the composition of the House during the Reagan administration was more liberal than that of the Senate. The second possible explanation is a structural one. Given the Constitutional arrangements, one would expect that the Senate, with its greater resources, would be more likely to challenge the President on matters of military affairs. Yet this is not so. Thus, perhaps it is true that the predominant liberal tendency in the House goes beyond the present-day balance of political forces.

Although to explore this theme in detail goes beyond the scope of this paper, initially it is possible to assert that a combination of the two aspects mentioned above seems to offer the best picture. As I have asserted before, the arrival of Ronald Reagan to the White House inaugurated a new era characterized by the predominance of the conservative tendency, not only in the Executive but in the Legislature also. The House was certainly affected by this phenomenon but to a lesser degree than the Senate. The loss of key liberal representatives in the 1980 election was, numerically, less important than those in the Senate. Likewise, this chamber was dominated by the Democrats during the entire Reagan administration, showing a more liberal approach, especially in foreign affairs.

Structurally speaking, it seems to be true that since the mid-seventies the House has been a more liberal chamber than the Senate. In 1983 Norman J. Ornstein asserted that even with the "changes brought by the 1980 election, the House has become much more 'liberal' than it was in the 1950s and 1960s... In 1979-1980, and in 1981-1982, the House "was and is clearly the more liberal chamber of Congress". Likewise, the conservative coalitions appeared less often in this chamber, expressing a permanent decline since the 1980.

The story is very different in the Senate. In 1989 two analysts showed that in 1975 45% of the Senate's members were liberals and 35% conservative. These figures changed substantially in the following years. In 1979 the proportion was 28% liberals and 38% conservatives. Finally, in 1983 and 1987 the relation was 20% liberals and 46% conservatives. Thus, the Senate and the House have taken two different paths that have widened the ideological distance between the chambers. Therefore, to restrict the explanation of the suits against the President to congressional disputes over legislation is to ignore more substantial elements like the changes in the ideological composition of Congress.
Finally, it seems that to some extent, the approval of the War Powers Resolution inaugurated a new era of interplay among the different branches of the U.S. government in the terrain of international military affairs. Since the end of War World II, a bipartisan consensus in foreign policy was created. Democrats as well as Republicans supported the nation's goals of globalism, anti-communism, and containment of the Soviet Union. However, during the mid-sixties and early seventies the cooperation among the political branches began to break down. The failure of the United States in Vietnam marked the end of the postwar national agreement on foreign policy. The consensus had been created by the national undertaking of the containment of communist expansion. Vietnam demonstrated to both the world and to American society the inability of the United States to fulfill this task. It was during U.S. military difficulties in Southeast Asia that Congress began to play a more active role in the war-making process.

The consensus before Vietnam permitted the Chief Executive to significantly
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expand his power in foreign relations without substantial congressional opposition. However, with the resurgence of Congress in the mid-sixties, the predominance of the President in military policy was challenged by the Legislature. The postwar model was threatened by the increasing congressional involvement in foreign affairs. To preserve the supremacy of the President in this field it was necessary to readjust the scheme. This task has been fulfilled by the court. By abstaining from dealing with cases that have challenged presidential authority in war policy, the judiciary has been the guardian of the supremacy of the Chief Executive in this sphere.

Thus, with the suits against the President for noncompliance with the War Power Resolution, we can observe a permanent vicious circle. A circle consisting of five steps.

First, Reagan's hard-line policy initiatives toward Central America and the Middle East occur, secondly, Congress opposition in several ways. Third, when the Chief Executive continued with his policy ignoring or circumventing the Legislature, some Congressmen seek the court's intervention to stop the presidential initiatives (fourth). Finally, the court dismisses the case, returning the strength, legitimacy, and power to the President to act freely in military matters. (Figure 1)

In brief, in this new interplay among the three branches of U.S. government the court has played a major role, perhaps the most important role, in the preservation of the historical predominance of the President as the main actor, the central figure, in U.S. military affairs.

NOTES


7 Ibidem, pp. 24 and 25.

8 Richard Whittle has asserted that important leaders of both chambers of Congress — Thomas
O'Neill Jr., Jim Wright, Robert H. Michael, Howard H. Baker and Robert C. Byrd—were called to the White House the night before and told the invasion was in the works. Cfr. Richard Whittle, "Questions, Praise Follow Grenada Invasion", in Congressional Quarterly Weekly Report, vol. 41, no. 43, October 29, 1983, p. 2221.


11 This section indicates that a report is necessary when U.S. Armed Forces are introduced "into the territory, air space or water of foreign nations, while equipped for combat, except for deployments which relate solely to supply replacement, repair, or training of such forces". Cfr. The War Powers Resolution, op. cit., p. 213.

12 Here the specification is when forces are "introduced in numbers which substantially enlarges United States Armed Forces equipped for combat already located in foreign nations", Ibidem.


15 Allan Ides, op. cit., p. 629.


23 Ibidem, p. 242.


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29 Senate, Congressional Record, September 29, 1983, p. 26253.
34 The letter is reprinted in U.S. Senate, Congressional Record, vol. 129, part 21, 98th Congress, First Session, October 26, 1983, p. 29277.
37 Ibidem, p. 29400.
44 Quoted by Michael Rubner, op. cit., p. 644.
50 Ibidem.
53 Among the supporters of this countersuit we find, Jesse Helms, Strom Thurmond, Paul, Laxalt, John G. Tower, S.I. Hayakawa, Jeremiah Denton, Barry Goldwater, Orrin G. Hatch, Dan Quayle, Paula Hawkins, Larry McDonald, Daniel Lungren, and Philip Crane.
55 Ibidem.
60 Quoted by John Felton, "Democrats Falter on Nicaraguan Covert Aid Ban", in Congressional Quarterly Weekly Report, vol. 41, no. 20, May 21, 1983, p. 1009.
71 John Felton, "Full House Approval...", op. cit., p. 1174.
74 About the U.S. Interests in Reflagging of Kuwait Ships one may consult Barry Rubin, "Drowning in the Gulf", in Foreign Policy, pp. 120-134.
79 Ibidem, p. 6107.
WHY DO SOME LEGISLATORS GO TO COURT?

80 Ibidem, p. 6090.
83 Ibidem.
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