

## TEACHING WITH ONLINE PRIMARY SOURCES: DOCUMENTS FROM THE NATIONAL ARCHIVES

### THE RETURN OF THE WEAPONS OF MASS DESTRUCTION SHELL GAME: PRESIDENT OBAMA, SYRIA, AND THE WAR POWERS RESOLUTION OF 1973

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#### Background and Context

In the aftermath of the Vietnam War and other so-called “Presidential Wars,” the Congress in 1973 passed the *Joint resolution concerning the war powers of Congress and the President*, commonly known as the War Powers Act. The intent of Congress, by the title and testimony, was to define and restrict the war powers of the President and to reassert and explain the war powers of Congress.

This joint resolution was introduced in the House of Representatives on May 3, 1973, by Representative Clement J. Zablocki, a Democrat from Wisconsin. The resolution passed the House by a vote of 244 to 170 on July 18 and the Senate by a vote of 75 to 20 on July 20. The resolution was reported out of a joint conference committee on October 4 and again passed the House by a vote of 238 to 123 and the Senate by a vote of 75 to 20 on October 12. President Nixon vetoed the resolution on October 24, but the House, on a 284 to 135 vote, and the Senate, on a 75 to 18 vote, overrode the veto. The resolution became law on November 7, 1973, completed from start to finish in approximately six months.

The War Powers Act has several distinct aspects regarding war powers. Initially it explains the intent and purpose of Congress. It then imposes on the President certain requirements for consulting with the Congress and the timing of certain reporting procedures. The resolution also spells out the consequences of presidential failure to meet these requirements and outlines and authorizes congressional authority and actions in those cases. Finally, the resolution makes clear the definition of the terms within the resolution and asserts that any judicial challenge of any part of the resolution only applies to that part and not the whole resolution.

While the delegation of war powers to the federal government in the U.S. Constitution appears straightforward, a number of issues and questions have arisen over the years concerning the constitutionality of the War Powers Act. The U.S. Constitution addresses war powers by dividing the powers between the Congress and the President. Article I, Section 8, gives Congress the power to declare war, raise and arm the navy, and, in the elastic “necessary and proper” clause, the power to do whatever else is needed to carry out those powers. Article II, Section 2, designates the President “commander-in-chief” of the army and navy and also of the “militia of the several states” when they are called into duty.

The discussion and argument, legal and otherwise, have revolved around a variety of questions. Is the power of Congress to declare war the same as the power to wage war? Does presidential authority as commander-in-chief also extend to waging war? Does the President have the power to wage war in expedient and emergency situations without congressional declaration or consent? Does congressional funding of a presidential military action constitute consent by the Congress to continue that action?

Since the passage of the War Powers Act in 1973, presidents have consistently held that it is an unconstitutional limitation of presidential war powers. Presidents have, nonetheless, submitted more than 120 reports to Congress concerning military action that complied with the War Powers Resolution. Some examples are the *Mayaguez* incident in 1975 by President Ford, President Reagan's use of troops in El Salvador and Lebanon between 1981 and 1983, President George H.W. Bush's Gulf war in Kuwait between 1990 and 1991, President Clinton's bombing of Kosovo between 1993 and 1999, President George W. Bush's invasion of Iraq in 2001, and President Obama's military actions in Libya in 2011.

Recently, President Obama asked Congress to approve air strikes in Syria to destroy chemical weapons the Syrian government has allegedly used against its citizens in the current civil war. This action was based on American intelligence and largely confirmed by United Nations inspectors. Like President Reagan in Nicaragua in 1986 and President Clinton in Kosovo in the 1990s, President Obama initially was willing to take military action and order the strikes on the chemical weapons, with or without congressional approval, within our outside the parameters of the War Powers Act. With mounting opposition to such action from the American public and strident, tenacious opposition from Russia and other countries, the President changed direction and submitted an approval request to the Congress (see S.J. Res.21 <http://beta.congress.gov/search?source=legislation&q=S.J.Res.21+>).

This resolution promises to be amended heavily in the Congress to further restrict the President's actions in Syria. At this writing (late September 2013), action on this resolution is on hold pending Syria's compliance with an agreement brokered by the United States and Russia under the auspices of the United Nations. That agreement calls for Syria to provide a full catalog of its chemical arsenal within a week (September 27, 2013) and allow United Nations inspectors to begin work in Syria no later than November 2013. Finally, the agreement requires the total elimination of Syrian chemical weapons by the middle of 2014. The Russians have made it clear that they, in no way, will support any sanctions against Syria for non-compliance.

The War Powers Resolution remains controversial. Some argue the act is vague, full of loopholes, and wholly contrary to the intent of the framers of the Constitution with regard to presidential war powers. Others argue that the clear intent of the Constitution was that Congress had the responsibility to engage the country in war, and if it does, it is merely the President's job to execute the military action. The courts have only touched these issues variously and tangentially. In the current situation with the use of chemical weapons in Syria, all of these factors are trumped by political

considerations. What a surprise. A war weary American public appears to have no interest in any involvement in Syria regardless of political, military, or moral considerations. It remains to be seen if Syria complies with the agreement on the elimination of its chemical weapons, or if President Obama, with or without the consent of Congress, within or outside of the War Powers Act, proceeds with military action.

For access to the document, Joint Resolution, Public Law 93-148, Concerning the War Powers of Congress and the President, visit <http://www.archives.gov/research/search>. In the search box, type the identifying ARC #7455197. This document is from the Textual Records of the U.S. Senate, Center for Legislative Archives, Washington, DC; Record Group 46: Records of the U.S. Senate, 1789–, and may be printed and duplicated in any quantity.

### **Teaching Suggestions**

#### **1. Focus Activity with Document Analysis**

Provide students with a copy of the featured document. Supply students with a copy of the document analysis worksheet found at [http://www.archives.gov/education/lessons/worksheets/written\\_document\\_analysis\\_worksheet.pdf](http://www.archives.gov/education/lessons/worksheets/written_document_analysis_worksheet.pdf). Ask students, grouped in pairs, to analyze the document and complete the worksheet. Guide a class discussion based on the questions from the worksheet and the issues concerning the document that are raised in the article.

#### **2. Current Events Activity/Group Comparative Analysis with Documents**

Complete the activity above for both the War Powers Act of 1973 and for the current resolution on hold in the Senate concerning military action against chemical weapons in Syria. (S.J.Res.21 <http://beta.congress.gov/search?source=legislation&q=S.J.Res.21+>). What are the differences and similarities? Additionally, students in several small groups might visit <http://docsteach.org/home/congress> to research and analyze other Congressional documents related to war using the procedure from number 1 above.

#### **3. Small-Group Class Discussion/Drawing Connections Activity: The History of the Use of Chemical Weapons**

Students might be surprised to find that the use of chemical weapons in wartime has a long history. Divide the class into small groups for research and assign each group either a time period or a type of chemical weapon. When the research is completed, ask each group to present their findings to the rest of the class and conclude with a whole class discussion on the use of chemical weapons through history. Within the context of the use of chemical weapons in Syria, how does the reaction of the United States, Russia, and the United Nations compare with the reaction to other incidents in history? The following websites might be useful:

<http://www.opcw.org/chemical-weapons-convention/>

<http://www.un.org/disarmament/WMD/Chemical/>

<http://www.state.gov/t/avc/trty/127917.htm#>

#### **4. Cross-Curricular Activity: The Political and Legislative Process and the War Powers Act**

After completing the activity in number 1 above, ask students to take particular note of the signatures at the end of the document. What is revealed about the political and legislative process involved in the passage? How does this document represent some of the “big ideas” in the Constitution, such as separation of powers, checks and balances, delegated or enumerated powers? While the document is called a “resolution,” is it also a law? What types of actions of Congress constitute laws?

#### **5. Brainstorming Class Discussion Activity: Implementing Foreign Policy**

Ask students to identify and explain the United States’ foreign policy decision relating to using military force to eliminate chemical weapons in Syria. What other actions might have been appropriate or effective? What might be the consequences of other actions? Was no action a viable option? Display the list of ideas so students can see them all. Ask them to evaluate each idea. Ask them if they think brainstorming is a useful decision making process.

#### **6. Individual Research: Traditions Outside of the Constitution: Tracing the Development of War Powers**

In a traditional research paper, ask students to research and analyze interpretations of the war powers discussed in the Constitution. Their research might be driven by questions like what the framers of the Constitution intended, and over time what traditions have developed outside the Constitution with regard to waging war? A review of James Madison’s notes on the Constitutional Convention and of *Federalist Papers No. 41, 45, and 69* might be useful.

#### **7. Project Documentary: Oral History**

Having compiled a list of questions relating to the issues that were raised in the article, ask students to create a video, website, or other electronic presentation that reflects from an interview the personal experiences and views of members of the military who have served in the various presidential wars or actions listed in the article. Lead a class discussion after the class has viewed the projects.

#### **8. Cross-Curricular Activity in Geography: Visualizing History**

Supply students with a list of all the geographic locations mentioned in the article relating to the use of military force and the War Powers Act. Assign each location to a small group of students and ask them to do research, create a map, and report their findings orally. Their reports would include identification of the issues, the military action taken, the geographic relevancy of the place, and the results or consequences of

the action. After the groups have completed their reports, plot all of the locations on a large map of the world and lead a class discussion of how the places are related. The map analysis worksheet at [http://www.archives.gov/education/lessons/worksheets/map\\_analysis\\_worksheet.pdf](http://www.archives.gov/education/lessons/worksheets/map_analysis_worksheet.pdf) might be helpful.

### **9. Extended Activity or Extra Credit: Presidents and Politics in the 1970s**

The War Powers Act was born out of the 1970s, and with good reason. Use any of the general activities above to shift the discussion to other events and administrations from the 1970s and draw connections between them and the War Powers Act of 1973. The following web links related to the Nixon, Ford, and Carter administrations might be useful:

<http://docsteach.org/home/nixonford100>

<http://docsteach.org/home/70s>

<http://www.jimmycarterlibrary.gov/documents/docs.phtml>

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