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## RESEARCH

# 'The Iraq War Momentum' in the Struggle over the Powers of the US Congress

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How parliaments and legislatures participate in war-making has raised interest among researchers from different disciplines, including constitutional law and political science. While war powers are usually considered to be included in the field of the executive branch, parliaments have played an increasingly relevant role as more democratic decision-making in both normal and exceptional times has gained prominence. The comparative aspect to examine war powers between parliaments or between the branches of government is often adopted to describe the authority and legitimacy of these powers. The US Congress is considered to have strong war powers on paper compared to parliaments in other liberal democracies. Many times, the experienced realities of war have, however, resulted in benefiting the executive branch. This article claims that Congress, however, has not given away its powers but has adapted them to the changing conditions. The debates on authorizations of use of force can be seen as momentum for Congress to address its constitutional war powers. This article draws on congressional debates on war powers with regard to authorization of using US armed forces against Iraq in 2002. The purpose is to show a vivid discussion on struggles concerning constitutional war powers and how these are interpreted, defined and understood against the background of historical, theoretical and constitutional discussions on war powers. As the committing of US armed forces and the separation of powers continue to be in the center of political discussions, it is relevant to examine the debates on war powers in the US Congress.

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**Keywords:** US Congress; debates; Iraq War; momentum; separation of powers

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## Introduction

Exceptional times, namely war and committing armed forces into hostilities, require decisive and swift action of the executive. Exceptional times have usually been seen as situations in which there is no time for debate or room for many voices. However, sound decision-making should also include the participation of the popular chambers. The 'public talk' in distinct institutional settings has long been a focal point of politics.

The consultative and decisive roles of the US Congress have collapsed to some extent vis-à-vis war-making, while the powers of the executive branch have been strengthened. A domestic mandate for foreign policy actions has, however, been considered important to

ensure the democracy aspect in decision-making. President Barack Obama referred to this when he decided to seek congressional authorization for the possible use of force in Syria after the employment of chemical weapons in 2013. Obama argued that while he can make judgments as Commander-in-Chief, he is at the same time 'President of the world's oldest constitutional democracy'. This led to the conclusion to secure broad support for actions:

So even though I possess the authority to order military strikes, I believed it was right, in the absence of a direct or imminent threat to our security, to take this debate to Congress. I believe our democracy is stronger when the President acts with the support of Congress. And I believe that America acts more effectively abroad when we stand together (White House 2013).

The debate on war powers has raised questions at regular intervals: 'The proper resolution of the apparent conflict in the allocation of war and foreign policy-related powers between the executive and legislative branches has been, and is sure to remain, a matter of hot debate as administrations and Congresses come and go' (Reynolds 1988, 25). Taking into account the United States' history in committing its armed forces abroad, the question of authorization is specifically relevant. However, a remarkable degree of 'uncertainty and debate' still exists about the occasions when Congress should actually authorize these actions (see Bradley 2019). It is usually considered that the president can respond to sudden attacks. The nature of operations (whether including boots on the ground or conducting an air operation) and the number of forces are used as criteria to evaluate to what extent the president can act unilaterally. For example, the employment of armed forces in Libya in 2011 was made by a presidential decision (e.g., Wolfensberger 2018). Despite the vast theoretical discussion and amount of published volumes on war powers and their use, the question and the debate are constantly evolving, and thus further studies are still needed.

The US Congress war powers are rather particular when compared to parliaments in other liberal democracies (see comparison in Bradley 2009). While Congress cannot vote on the confidence of the president, members of Congress can communicate their view to the public and present differing opinions and alternatives for the government's actions through plenary session debates. This is in contrast, for example, with the British parliament's authority of war power and its development. In Britain, the fact that parliament had a debate on committing armed forces in Iraq instead of just relying on the executive's 'royal prerogative' in 2002–2003 has been considered as a 'culmination' of the British parliament's role in decision-making on committing armed forces (see Häkkinen 2016). As opposed to the British case, debate in the US Congress is rather expected. And the lack of debate (or action) is seen as an abrogation of congressional powers.

Calling the German *Bundeswehr* a *Parlamentsarmee* refers to the fact that parliament has a say when German armed forces are committed. All deployments must have a prior parliamentary approval (see the Federal Constitutional Court 2015). Furthermore, the Parliamentary Commissioner for the Armed Forces is elected by the Bundestag to ensure functioning parliamentary oversight of the armed forces. In the United States, parliamentary oversight belongs to the Armed Forces committees of the Senate and the House of Representatives, which have legislative authority over defense and the military. The constitutional language of Congress to declare war has evolved in the discussion to indicate collective judgment; in other words, Congress should have a word in committing US armed forces. Congress has done this by debating and voting on the legislative measures granting authorizations, such as the one examined in this article.

Besides enacting authorizations, Congress also has other parliamentary ways of acting. The Republican controlled House of Representatives, together with Democrats, voted against the one-year military involvement in Libya in 2011. The vote to cut the funding, however, was also rejected. (see e.g., Kasperowicz 2011) The Congressional appropriation process is one way to have a role in committing armed forces. For example, in 2007, Congress enacted appropriations to fund the Iraq war with some conditions concerning deployments of additional troops and deadlines for some of the ongoing military operations. President George W. Bush vetoed the bill claiming the imposed checks were unconstitutional 'infringes' of presidential power. Not having the two-thirds majority in both houses to override the veto, Congress managed to pass a bill in the end. The bill did not include any specific schedule for the removal of US troops from Iraq, but it was a bill the president was willing to sign (Elsea, Garcia & Nicola 2013, 21).

Rather than drawing on any specific theoretical model or conducting foreign policy analysis, this article examines the debate on the Iraq War in the US Congress. This specific corpus of materials has been often neglected in scholarly works examining constitutional struggles. Theoretical, constitutional and historical frameworks provide insights of how war power debates and arguments are presented and carried out. The debates are, however, inherently political in the sense that each of these debates, including the one examined in this article, also should be considered as momentum for Congress to address its powers, where positions can change, new interpretations are formulated and the changing circumstances and power relations are addressed. Thus, the article provides a novel viewpoint in contrast to the vast amount of literature by academic commentators examining the constitutional struggles of war powers (e.g., Ramsey 2002; Zeisberg 2013) or decision-making on the Iraq War (e.g., Gause 2009; Mitchell & Massoud 2009).

The debates on authorization for use of military force (AUMF) against Iraq show the 'traditional' dichotomy of war powers: those who support the executive privilege to act by referring to the Commander-in-Chief powers, historical precedents and the actual complicity of war-making versus those who support the role of Congress by referring to the specific language of the Constitution, the democracy aspect of including more than one voice or view and constitutional 'separated but shared powers'. While these overall categorizations can be made, the closer analysis of debates on authorizations for use of military force reveals the specificity of each of these debates.

The contribution of this article is to rely on congressional debates and to study US Congress members' own views and arguments concerning the political significance of Congress' debates in war-making and the value of the debate itself. While the main positions of the members of Congress are well-known and the topic itself much studied, this article examines the adopted formulations and arguments with respect to the constitutional framework of the US Congress' powers regarding war-making. Congressional debates provide a way to consider how the constitutional powers of Congress and the president are not only interpreted but also supported/opposed and finally granted. The congressional debates as main sources have been adopted in rhetorical analysis (see i.e., Rountree 2018) or to examine debates on youth suffrage, to give some examples (see Amsden 2017). They form a specific corpus and a useful record to examine policies and legislative actions.

In the first part, the aim is to examine constitutional struggles over war powers. This article neither differentiates between deliberation, bargaining, negotiation or debate (Besette 1997) nor analyzes the quality of the debate, but rather it treats debates as a form of political action as such (see e.g., Wiesner, Haapala & Palonen 2017). Then the analysis moves on to examine the debate over authorizing the use of military force. The third part of the article

draws on the problems related to Congress and its role in war-making, before bringing the different aspects together in the conclusion.

### **Congressional Debates as a Locus for Examining Constitutional Struggles**

Much of the war powers literature has concentrated on the powers of the executive under the Constitution, the role of Congress in enactments or the actual authorizations. Charles Tiefer and Kathleen Clark (2016, 685) have emphasized congressional and presidential dialogue of war powers, arguing how

Through a robust and candid dialogue between the political branches, the nation can calibrate the exercise of its war powers, ensure that a commitment to war is roughly consistent with the views of the sovereign public, and fulfill the Framers' vision of both political branches being involved in decisions to engage in war.

An analogous approach is adopted in this article, concentrating mainly on congressional discussions before the final outcome. The debates studied in this article are those in Congress on H.J.Res.114 and the Senate considered measures S.J.Res. 45 and S.J.Res. 46 in October 2002 (for further details on congressional action, see legislative history of P.L. 107–243).

Representative Lee Hamilton (D-IN) (2000, 760) in his article "What I Wish Political Scientists Would Teach about Congress" has argued how 'People misunderstand Congress' role if they demand that Congress be a model of efficiency and quick action.' In his book *America's Congress*, David Mayhew (2000, 9) has described the different capabilities of a legislature as 'a decision machine, a forum, an arena, a stage, or a spring-board'. Many of these aspects also involve debate and deliberation. What function, then, does this debate or deliberation have in the US Congress? Joseph M. Bessette, in *The Mild Voice of Reason* (1997, 151), has described the meaning of the floor debates in Congress as follows:

Congress presents its deliberative face most prominently in public debates on the floor of the House of Representatives and the Senate. This is where legislative proposals are advanced and defended, where the opposing sides present information and arguments to support their positions, and where, ostensibly, members are persuaded of the merits or deficiencies of legislative initiatives.

The two houses of Congress have, however, different rules and procedures with regard to the opportunities for debate. Senator Christopher Dodd (D-CT) referred to the difference between the two chambers as follows: 'The unique role of the Senate is the role of debate, unlimited debate. It is what makes us fundamentally different from the Chamber down the hall.' He also pointed out that efficiency was not the goal of the Founding Fathers: 'They understood *the importance of debate and discussion* when a matter of this magnitude and this significance is before the American public' (US Senate Oct. 9, 2002, emphasis added). Even though the Senate and House are very different, the format of basic procedures is similar in both chambers: committee hearings and markups and floor debate (Bendix and Quirk 2013, 317).

The capability of Congress, with its 535 members, to make deliberative decisions has been contested, for example by referring to the executive privilege. One real concrete example of the privilege is access to relevant information as mentioned by Representative Bill Delahunt (D-MA):

When we began our debate on this resolution yesterday morning, we did not have the benefit of declassified intelligence estimates released only last night, which indicate

that Saddam Hussein is unlikely to initiate a chemical or biological attack against the United States unless he concludes that a U.S.-led attack is inevitable. Such contradictions between classified information in the administration's public statements make it very difficult for Congress to have a meaningful debate. It puts those few Members of Congress who have access to this information as members of the Permanent Select Committee on Intelligence in a truly awkward position and leaves the rest of us and the American people in the dark (US House of Representatives Oct. 9, 2002).

The other aspect of deliberative decision-making is how confrontation of different values and opinions could be considered harmful concerning committing US armed forces. 'Politics stops at the water's edge' is quoted to justify why decisions of national security do not involve differing views. It is clear that providing a very detailed discussion of committing armed forces in the plenary session is impossible, but the debate's role is a principled one: providing an opportunity to argue for the grounds of the overall decision and a possibility to air differing views and opinions.

In the course of the debate on Iraq AUMF, members of Congress emphasized the role of the debate namely because of the severity and consequences of committing US armed forces. As David Dreier (R-CA) stated during the House consideration of the measure, 'No Member of this body should ever be too eager to send our military into harm's way. Nor should we ever consider taking such an action without a strong and vigorous debate' (US House of Representatives Oct. 8, 2002).

The substantive discussion takes place many times in the committees, but the floor procedures have their own role as pointed out by Representative Tom Lantos (D-CA): 'Some argue that the outcome of this debate is predetermined. It is not. Although the language of this joint resolution may undergo little change and its passage is all but assured, the level of support it will command is far from certain' (US House of Representatives Oct. 8, 2002).<sup>1</sup>

It is interesting to see how the members of Congress themselves consider their role and the actual decision-making process by means of debate: how the (constitutional) powers (but also influence, control and authority) are interpreted, defined and detailed. Even when the debates are not necessarily consequential, they have their own significance for the members of Congress. To have an impact on the presidential decision to commit the use of armed forces, Congress may proceed through debate, hearings and votes, in addition to floor debates.<sup>2</sup>

### **Congressional Debates on the Authorization for Use of Military Force against Iraq**

President George W. Bush asked for congressional authorization for the use of force, but the resolution was also criticized because it was considered to leave too much room for the president's discretion to determine when to use force, thus serving as an abrogation of congressional power. Before the president issued an order, senators Tom Harkin (D-IA) and Arlen Specter (R-PA) introduced bipartisan legislation in the Senate to require Congress to debate and vote on a resolution authorizing the use of military force (US Senate Oct. 10, 2002).

In the debates in Congress on authorization for the use of military force against Iraq, we can distinguish the following topics: the description of the situation, whether there is a

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<sup>1</sup> The author would like to point out that the titles of the members of Congress included in this article refer to the situation at the time the examined debates (in 2002) took place and thus do not necessarily reflect the current situation.

<sup>2</sup> Also the funding mechanism and the resolutions and bills introduced after the forces have already been committed. (For more on congressional control and presidential war powers, see e.g. Howell & Pevehouse 2007).

[direct] threat to US national security and what that threat is or, rather, whether the threat is to the US national security interests; the consequences of both action and inaction; the scope and limits of the president's power; the substance of the resolution; pre-emptive action, unilateralism, the United Nations (UN) (and resolutions) and allies; sovereignty, unity and the price of action (or inaction); declaration of war and the powers between the branches of government; unilateral action of the president and flexibility; the war on terror; and how much substantive guidance Congress can give to the president. The focus of US policies on economic and domestic issues was also brought up, as well as the question of use of force as a last resort after exhausting all diplomatic efforts first. The discussion also involved the question of pre-emptive strikes as a change of US foreign policy and whether the president's power to respond to sudden attacks possibly provides authority to act.

### ***Collective judgment in war-making***

War powers granted in the Constitution are open for interpretation, and the growth of executive powers since the Second World War has further complicated the picture. (See more about debates on constitutional war power struggles in Congress in Kronlund 2013; 2015). In a colloquium on war powers, Charles Bennett, then a member of the House (D-FL), pointed out that the division of war powers is not to be interpreted as a 'conflict' between the branches of government. The Constitution was 'a gift from the people to the nation' and not other way around. According to Bennet (1988, 29),

The tenth amendment to the Constitution echoes this, the issue of war powers is not a conflict between the executive and the legislative branches. Rather, it is a question of whether or not we want to follow what our forefathers wrote into the Constitution: that it would be Congress which would control whether the people would go to war.

The power of Congress to declare war looks outdated against the backdrop of the current political realities. What 'declaring war' means should be thus clarified. For Bennet (1988, 40), 'It simply requires that Congress debate the question of whether we are going to be at war or make appropriations for the military that will be deployed, call people up for war, and perform all of the other acts that need to be done in anticipation of going to war.' From this perspective, Congress fulfills its constitutional role when it actually debates on authorizations to use military force and evaluates the situation and its consequences.

In the debates on Iraq AUMF, members of Congress provided different reasons for the idea of collective judgment. They were concerned not only about the debate as such but also about the possibility and validity of hearing different opinions. During his remarks on the floor, Representative Lantos pointed to the democratic nature of the decision-making process:

Only in a democracy are the people, through their chosen representatives, entrusted with their own security. Only in a democracy must the protectors answer to those they protect. Only in a democracy must the Commander in Chief come to Congress in exercising military power. Debating war and peace as we do this day is the essence of democracy (US House of Representatives Oct. 8, 2002).

The argument by Representative Lantos refers to the separation of powers, accountability and the role of Congress in providing the platform for debate.

The debate left room for differing views. Representative Philip Crane (R-IL) referred to this by saying 'the world community watching this debate ought not conclude that respectful disagreements on the Floor of this House divide us; on the contrary, we find strength through an open airing of all views' (US House of Representatives Oct. 10, 2002). Senator Chuck Hagel



(R-NE) also referred to the idea of deliberation and pointed out the actual effects of the congressional debate: 'the Senate is, by design, a deliberative institution. [...] Ours is not an academic exercise: debate informs our decision whether to authorize the President to use force if necessary to enforce UN Security Council resolutions dealing with Iraqi disarmament' (US Senate Oct. 9, 2002). Congress' consideration of the measure thus provides not only a forum for presenting different sides and views (and finally coming to a conclusion) but also grounds and parameters for action.

The debates are seen as a way for the representatives to state their decision to vote no/yes and the grounds for their vote—explaining and referring to the views and opinions of their constituencies to justify their stance. For Senator Dianne Feinstein (D-CA), her vote was not only a 'representative' act:

If I were just to cast a representative vote based on those who have voiced their opinion with my office – and with no other factors – I would have to vote against this resolution. But as a member of the Intelligence Committee, as someone who has read and discussed and studied the history of Iraq, the record of obfuscation and the terror Saddam Hussein has sown, one comes to the conclusion that he remains a consequential threat (US Senate Oct. 10, 2002).

The unity of the government and the negotiation between the branches of government were also referred to in consideration of H.J.Res. 114 by Charles Bass (R-NH): 'The process of deliberation has worked. [...] Bipartisan, bicameral negotiations have subsequently improved the resolution and led to a more thorough discussion of the complex factors that must inform this decision' (US House of Representatives October 9, 2002).

The AUMF proposal from the president was not taken as granted as mentioned by Senator Byron Dorgan (D-ND): 'The joint resolution that Congress will vote on tonight is fundamentally different from the one the President sent to us. It was narrowed substantially in scope through bipartisan negotiations' (US Senate Oct. 10, 2002). Senator Leahy's comment reveals that not only does the executive branch influence Congress, but the converse is also the case: 'there is no question that having this debate, which really began some months ago, has helped move the administration in the right direction' (US Senate Oct. 9, 2002). Therefore, even though historical precedents and constitutional settings provide guidelines, the debates are separate events in this continuum of war powers and thus are worth examining.

### ***Authorization for use of military force as a declaration of war?***

When Congress passed the Iraq resolution it did not declare war but passed a resolution authorizing the use of military force with certain conditions. The debate itself indicates the question of the nature of the measure attracted opposing interpretations in the House. Defining the situation as a war implies there is or should be certain consequences. According to Representative Mike Honda (D-CA), the House resolution was 'Not only an authorization of use of force, but a *declaration of war*' (US House of Representatives Oct. 9, 2002, emphasis added). For others, such as Representative Elijah Cummings (D-MD), it was not a 'declaration of war':

Although this resolution would authorize the President to take this Nation to war, *it is not a declaration of war, it is a blank check to use force* without the moral or political authority of a declaration of war. Congress must not abandon its authority under the Constitution. This resolution would do just that (US House of Representatives Oct. 9, 2002, emphasis added).



Mike Rogers (R-MI) also mentioned the changing realities of war: 'As we are all learning, the face of war is changing. Formal declarations of war by our enemies are going the way of trench warfare and cavalry charges – relics of a different era. The Resolution currently before Congress reflects that changing reality' (US House of Representatives Oct. 9, 2002). The resolution was seen as an abrogation of Congress' constitutional powers because of its 'flexibility' to address the changing realities of war: 'This resolution transfers the responsibility, the authority, and the power of the Congress to the president so he can declare war when and if he wants to', Representative Rand Paul (R-TX) argued (US House of Representatives Oct. 8, 2002). Despite the situation, there should be no abrogation of Congressional powers serving as a balancing act to the president's powers, John B. Larson (D-CT) pointed out: 'Our system is one of checks and balances; and clearly from my perspective, the use of force preemptively and unilaterally needs to be held in check, debated, discussed and not rubber stamped in a climate of fear and crisis' (US House of Representatives Oct. 9, 2002).

The authorization for use of military force often includes the 'blank check' problem. The language of the considered resolution is not limited enough (or is too limited) with regard to substance and time frame or it provides too much leeway for the president to act unilaterally (compare with similar discussions in relation to the AUMF after 9/11). Both AUMFs that Congress passed in the early 2000s (after 9/11 and against Iraq) are still valid as of June 2019 (see Kaine 2019). After their approval, repealing the AUMFs has been introduced at regular intervals. The Democrat controlled House of Representatives passed an appropriations bill in June 2019, including a provision to repeal the AUMF passed by Congress in 2001 (see Khanna 2019).

### ***Constitutional language and foreign policy realities***

The overall validity of the Constitutional power to declare war raised broad discussion: 'Some – even in this body – have claimed that this constitutional requirement is an anachronism, and that those who insist on following the founding legal document of this country are just being frivolous. I could not disagree more' (Rep. Paul, US House of Representatives Oct. 8, 2002). The idea of Congressional debate (and therefore a vote) is connected to the constitutionally granted power of Congress to declare war, as expressed by Representative Louise Slaughter (D-NY):

Mr. Speaker, the House of Representatives has begun a historic debate on the most serious topic [that we have] ever considered by this body, the question of whether to go to war. The Constitution states explicitly that Congress shall have the power to declare war. This great and terrible power is vested not in the individual of the President, but in the collective will of the electorate as embodied by its representatives. Members can cast no more weighty vote than this (US House of Representatives Oct. 8, 2002).

The constitutional sharing of war powers indicates that both branches of government have a role to play, but it is often considered Congress' role in giving the initiative and setting the parameters for action (see more about debates in Kronlund 2013).

Congress' constitutional power was also brought up in the following argument by John Linder (R-GA), noticing the rareness of congressional war declarations:

Since 1798, the United States has involved itself in approximately 310 separate military actions worldwide. Of that total, Congress has authorized the use of force through

legislation 11 times and has declared war on sovereign states five times. Thus, the vote we will cast on this legislation will be among the most profound of our careers (US House of Representatives Oct. 8, 2002).

The Founder's idea of granting the power to declare war primarily to Congress was referred to in the House debate by José Serrano (D-NY), who at the same time noted the contingent nature of Congress' role:

With regard to military force, our founding fathers debated the proper place for the power to make war at the Constitutional Convention and feared it most in a new democracy. *They specifically rejected proposals to give such a power to the President and directed that only the elected representatives of the American people in our Congress could declare war.* For most of our history, Presidents followed the restrictions of the Constitution when going to war. In the 1950s and 1960s, we deviated from the clear requirements of the Constitution to our profound detriment. I believe that it is far worse to send our uniformed men and women into a conflict the American people do not support than to never send them at all. In recent years, Presidents Bush and Clinton returned to our historic, constitutional practice of Congress voting before sending uniformed Americans into harm's way. Congress voted on U.S. military actions in Kuwait, Haiti, Bosnia and Kosovo prior to deployment (US House of Representatives Oct. 8, 2002, emphasis added).

Senator Patrick Leahy (D-VT), however, stressed how 'an issue of war should be openly debated' and pointed out how the responsibility of Congress to declare war 'has often shirked'. Congress should not abdicate its constitutional powers and defer to the executive branch (US Senate Oct. 9, 2002). Melvin Watt (D-NC) referred to the powers of the president as the Commander-in-Chief. He insightfully pointed out that these powers have been under constant debate: 'Over the years, these provisions of the Constitution have been the subject of a virtually endless tug of war between the legislative branches and the executive branch, as well as the subject of virtually endless debate among constitutional scholars' (US House of Representatives Oct. 8, 2002).

According to Lincoln Diaz-Balart (R-FL), Congress should have a debate on the issue but the reality is that 'only the Commander-in-Chief can really lead in the field of national security' (US House of Representatives Oct. 8, 2002). 'Five hundred and thirty-five Members of Congress cannot conduct war. It is our responsibility to determine when and under what circumstances we will authorize the Commander in Chief to do that, but only the President, as Commander in Chief, can do that' (Sen. Joseph Lieberman (D-CT), US Senate Oct. 8, 2002). Senator Lieberman drew attention to the role of Congress in authorizing the use of the armed forces and the role of the president in conducting the actual military operations.

Arguments presented in Congress refer also to the manifold interpretation of war, which poses its own challenges concerning the interpretation of the situation:

Historians note that Congress exclusively possesses the constitutional power to initiate war, whether declared or undeclared, public or private, perfect or imperfect, de jure or de facto, with the only exception being the President's power to respond self-defensively to sudden direct attack upon the United States. There is no constitutently recognized authorized use of force,' Lynn Rivers (D-MI) argued (US House of Representatives Oct. 9, 2002).

Representative Rivers continued that the fact that Congress has transferred its powers in the past does not change the constitutional language: 'Congress is not free to amend the Constitution through avoidance of its duties, and a President is not free to take constitutional power through adverse possession (ibid.).

Changing conditions versus the existing constitutional framework was mentioned in many arguments. Senator Richard Durbin (D-IL) noted during the Senate debate how

The tools of war, the incidence of war, the timing of war has changed. But it has changed throughout our history. The principles, the rules of value, the norms and conduct which we apply today were applied starting in a much different era and applied again and again as we saw ourselves move into an era of airplanes, into an era of intercontinental missiles. The same standards, principles, norms, conduct, and value remain (US Senate Oct. 10, 2002).

### ***The quality and timing of the debate***

The members of Congress referred also to the substance of the debate. Representative Martin Frost (D-TX) implied there would be no room for party politics even though opposing arguments would be presented in the debate:

I expect that this debate will be as robust as it is serious. It should come as no surprise that many sincere people in the administration, in Congress, and among the public have varying views about how best to deal with Saddam Hussein; and it should come as no surprise that there is no party position on an issue of this gravity (US House of Representatives Oct. 8, 2002).

Senator Hillary Clinton (D-NY) also pointed out the value of hearing both sides on the measure under consideration:

I also greatly respect the differing opinions within this body. The debate they engender will aid our search for a wise, effective policy. Therefore, on no account should dissent be discouraged or disparaged. It is central to our freedom and to our progress, for on more than one occasion history has proven our great dissenters to be right (US Senate Oct. 10 2002).

Representative Mary Bono (R-CA) argued how national security is a bipartisan issue:

Mr. Speaker, it was quite significant for so many of us with such varied backgrounds and philosophies to come together with the President in the Cabinet Room last week. We were able to prove that national security is an issue that transcends party lines and sends a signal to our aggressors that we will stand firm and united in order to protect our country and her citizens (US House of Representatives Oct. 9, 2002).

Senator Ted Kennedy (D-MA) noted,

There is a difference between honest public dialogue and partisan appeals. There is a difference between questioning policy and questioning motives. There are Republicans and Democrats who support the immediate use of force, and Republicans and Democrats who have raised doubts and dissent. [...] The standard that should guide us

is especially clear when lives are on the line: We must ask what is right for country and not party (US Senate Oct. 10, 2002).

The debates show how authorization for the use of military force was considered to be outside of the political sphere: 'The decision to go to war cannot, must not, ever be a function of politics' (US Senate Oct. 7, 2002). The argument is at odds with the Clausewitzian view of war and politics (see Clausewitz 1908).

Representative Walter Stenholm (D-TX) described how one purpose of the floor action is to find common ground between the opposing sides (the members use the word consensus in the meaning of argument or negotiation):

Mr. Speaker, often when we Members come to the house floor to make our arguments about public policy, our rhetoric differs significantly because we have sharply different visions. Our policies are aimed towards different goals and priorities and those various goals dictate various approaches (US House of Representatives Oct. 8, 2002).

Representative Frost also brought up the party divisions and the question of opposition:

I want to say a word about the role of the minority in our system of government. Some suggest that the minority's role is to automatically oppose everything sought by the President. I disagree. The minority can play a constructive role by working to improve a Presidential proposal and, therefore, helping achieve a national consensus. That is particularly true in matters of foreign policy (US House of Representatives Oct. 10, 2002).

Frost's argument seems to oppose the common idea that 'politics stops at the water's edge' and points to the president as the initiator of the resolution (as in the case of Iraq), suggesting that the decision of committing US armed forces should require a national 'consensus'.

Representative Lindsey Graham (R-SC) also pointed out he is not in Congress 'to tell Members that they should follow blindly their President or their leadership. God knows, I have never been accused of that. But in matters such as this, we must try to achieve consensus because so much is at stake'. Representative Graham continued by pointing out the strength of the proposed measure (Hastert, Gephardt, Hyde and Lantos) as opposed to the substitute amendment offered by Representative Spratt<sup>3</sup>: 'The strength comes from the Speaker, the minority leader, committee chairmen and ranking members and the President reaching consensus' (US House of Representatives Oct. 10, 2002). The argument also indicates the different parts of government working together when handling the measures to be considered.

One of the key questions of political agenda is timing: how and when to bring resolutions to the floor consideration. When having a majority in the House of Representatives, the Republican Party has followed the *Hastert rule*: resolutions are not brought up if they are not supported by the majority of the majority (i.e., Strand & Lang 2013). Overall, time played a significant role in the debates. Questions, whether enough time for debate was secured, how the time for debate was allocated between the members, as well as timing, raised discussions

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<sup>3</sup> Spratt's amendment would have required a second vote for Congress to approve 'an attack of the use of force', while ensuring a 'fast track for its consideration'. Representative Spratt emphasized that the aim of his amendment was not to curb the president's powers but rather to maintain the checks and balances (see Oct. 10, 2002, H7754).

in both houses of Congress. Senator Robert Byrd (D-WV) commented on the timing of voting on the resolution: 'We are being asked to vote on a resolution authorizing the use of force in a hyped up, politically charged atmosphere in an election year. Congress is again being rushed into a judgment' (US Senate Oct. 10, 2002).

Not every member of Congress agreed to the floor procedures and the allocation of time. The opportunity to hear both sides was questioned in the House:

If we enter this debate with three-quarters of the time distributed to one side and only one-fourth to the other, it is obvious that the weight of the debate will be unfair going in, and that those who oppose the resolution will be facing a stacked deck. That is not appropriate or in keeping with the traditions of this House (US House of Representatives Oct. 8, 2002).

Representative Maurice Hinchey (D-NY) also pointed out the unfairness of the situation and in his remarks emphasized: 'I would request that the majority party also divide the time allotted to them so that half of that time may be distributed among Members who are opposed to the resolution. In that way we will have a fairer debate' (US House of Representatives Oct. 8, 2002). The adopted rule for consideration of the resolution did not include any specific point of 'fair share of the time', as Representative Paul noted, adding that Democrats had adopted such a point of procedure (US House of Representatives Oct. 8, 2002).<sup>4</sup> Representative Hyde responded by saying, 'It is my intention to yield time to every Republican who asks for it, regardless of what side they are on' (US House of Representatives Oct. 8, 2002).

### **Obstacles and Enablers of Congressional Action in Addressing Constitutional Struggles**

Congress has shaped public debates on national security. It has a number of means through which to accomplish this objective, including the power of investigation to impact public debate (Zelizer 2010, 4). Simultaneously, Congress has often abrogated its powers. Party leaders in Congress have not been interested in making members vote on military commitments that could harm them in the next election cycle (Wolfensberger 2018, 77). Instead of declaring war, Congress has enacted authorizations for the use of military force not only against Iraq, but also in relation to Lebanon (1982), the Gulf War (1991) and the September 2001 terrorist attacks. US military force has been involved in but not authorized by Congress in at least eight different conflicts, such as in Grenada (1982) and more recently in Libya and Syria (Wolfensberger 2018, 82).

Procedural decision-making has been contrasted with emergencies necessitating quick and decisive action. Bessette (1997, 32) has pointed out that even when Congress is in session all the time (which was neither the Founding Fathers' idea nor its practice in the early days), procedures that enhance 'sound deliberation'—including hearings and debate at the committee level, laying the groundwork for suggestions to the 'full body', plenary session debates and conference committees settling differences between the House and the Senate—render 'legislative decision-making' time-consuming along with the demands of the administration. Notwithstanding, the members of Congress acknowledge limitations of time in their procedures, with the result that expedited consideration procedures may be included, for example

<sup>4</sup> The rule provided that Mr. Hyde from Illinois and Mr. Lantos from California each will control 8.5 hours of debate on the resolution. After the conclusion of the amendments, 1 hour of debate equally divided and controlled by the committee of International Relations chairman and ranking member (see Oct. 8, 2002, H7191).

in the wording of resolutions (cf. Spratt amendment to H.J.Res.114). Furthermore, time has been regarded as an asset in Congress for securing sound decision-making.

The emphasis on debate in relation to the authorization of the use of military force seems to be in contravention of the delegation of powers to the executive. Two perspectives to the debates have to be taken into account: 1) there is a gap when it comes to the debate or vote on the authorization or declaration of war and 2) the debate is not necessarily of any consequence in challenging the executive branch's decision, for several reasons explicated in this article.

### **Concluding Remarks**

A certain set of arguments on behalf of a debate in relation to committing US armed forces into hostilities was presented above. The debate is related to the power of Congress to declare war, the conceptions of collective judgment and popular sovereignty, and to Congress itself—its character and how it is expected to work. The debate provides a way to explore and explain the course of action that the nation will take. It is also a way for members of Congress to address their concerns and to provide reasoning to their votes. The debates refer to the substance of the measures under consideration with different nuances, as opposed to just applauding for presidential decisions. It gives room for Congress members to share their views on the constitutional separation of powers and on how the current authorization is interpreted against the wider framework of war powers.

The legislative debate performed several important functions: it provided a platform for interpreting the powers of Congress and the powers of the president in war-making, it created opportunities for the members of Congress to air their (differing) opinions and to provide foundations for their voting, it illustrated how the substance of the content should be interpreted, such as whether it was seen as a declaration of war or as a blank check for the president to act. The debates also indicated the procedural aspects of decision-making (i.e., what kinds of negotiations have been conducted within Congress and the branches of government before the enactment of the final resolution).

The members of Congress advised their colleagues on whether to support or oppose amendments by presenting their own views and by 'urging to reject'. They also have a habit of explaining what their votes mean (e.g., vote to support the resolution under consideration for 'disarmament' instead of regime change, or a vote to support is 'not a vote to rush to war', or the 'vote is not an endorsement of a policy of preemptive war'). The expression used was that 'Congress should speak with one voice'. As Senator Tom Carper (D-DE) noted, 'The need for action, however, does not preempt the need for an objective and open debate on the course of action we choose and the consequences of our subsequent actions' (US Senate Oct. 10, 2002). The possibility of airing different opinions was appraised in several arguments. By first debating and then enacting a resolution to authorize the use of military force, Congress also fulfilled its responsibilities in war-making.

As pointed out by the representatives themselves, the debate does not necessarily change legislation or votes, but it is a meaningful procedure to include more than one voice and to present the views of Congress (also through the number of votes). Through debate, the members of Congress position themselves and communicate to their constituencies, as well as challenge the given interpretations or course of action. By authorizing the action, Congress can also hold the executive branch accountable for its actions. During the debate, Senator Lieberman noted that, in addition to the power of the purse, Congress also has 'the power to change its opinion' (US Senate Oct. 10, 2002). The votes are also followed afterwards. During her presidential campaign in 2016, Hillary Clinton had to explain her vote on the Iraq resolution that she later called 'a mistake' in several instances (e.g., Bowden 2017).



The arguments show the interaction between the branches of government. Many references were made to briefings between the members of Congress and the administration. Yet the lack of information or experienced uncertainty related to the situation was also commented on. Other relevant aspects of this particular consideration of the measure were the substance of the resolution considered in Congress, the UN resolution and diplomatic efforts, and whether there should be a second vote in Congress if the use of military force were actually implemented. The relevant questions concerned the decision-making procedure: when, how and by whom the decision to commit US armed forces should and could actually be made and what kind of role the US Congress should have in committing US armed forces into hostilities.

The role of parliament is constitutionally or otherwise recognized but by no means given or authorized; rather, it is many cases in a flux (see Häkkinen 2016; Kronlund 2015). Despite the 'normality' of congressional debates on committing US armed forces, they should be considered as separate 'momentums' for Congress to restore its powers in the continuum of discussions on war powers. The constitutional setting provides guidelines, but no definite conclusion has been reached about war powers. The congressionally passed War Powers Resolution of 1973 was one effort to provide more clarification, but the bill has not worked as intended. Changing political contexts, realities and power relations have resulted in enduring debate on the role and authority of Congress and the president in war-making. In the United States, the Supreme Court is often referred to as the source of constitutional interpretation. It has been, however, reluctant to take a stand on war powers or has decided to leave foreign policy issues for inter-branch dialogue (Ackerman 2015). Congressional debates are thus useful primary sources to examine constitutional debates on war-making. Representative Hinchey's argument aptly describes this view:

This is a matter of such utmost seriousness which involves issues of life and death as well as the *interpretation of this body of the United States Constitution and the division of powers between the executive and legislative branches*, so much so that to provide such a small amount of time is unreasonable and unwarranted in this case (US House of Representatives Oct. 8, 2002, emphasis added).

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