

# The Decision to Go to War in the Persian Gulf

## The Case

When the newly elected 102nd Congress convened on January 3, 1991, congressional leaders faced a unique dilemma. In the searing desert on the shores of the Persian Gulf nearly 430,000 United States troops faced an equally large Iraqi army. President George Bush had sent the American troops to the Gulf area after Saddam Hussein, the dictator of Iraq, launched a brutal invasion of Kuwait on August 2, 1990.

The President had also organized a 30-nation coalition to stand with the Americans against Iraq. Further, the United Nations had placed economic sanctions on Iraq and had authorized the use of military force unless Hussein withdrew from Kuwait by January 15, 1991.

Congress, however, the only branch of the American government with the formal power to declare war, still had not acted. As the January 15 deadline approached, President Bush asserted that as commander in chief he did not need congressional approval to go to war. Senate Majority Leader George Mitchell disagreed. "Under the Constitution," Mitchell warned, "the President has no legal authority to commit the U.S. to war. Only Congress can do that." With the world watching, Congress and the executive branch debated a key constitutional question: Could President Bush send troops into combat without congressional approval?

## The Background

The showdown between Bush and Congress stemmed directly from the separation of powers built into the Constitution more than 200 years ago. The Framers of the Constitution feared that putting military power and executive power together in one branch of government would lead to tyranny. Thus, they divided things up.

The Framers gave Congress the power to declare war. James Madison, a key Framers who went on to become President himself, explained why:

*The Constitution supposes what the history of all governments demonstrates, that the Executive is the branch of power most interested in war and most prone to it. It has accordingly with studied care vested the question of war in the Legislature.*

—JAMES MADISON, 1798

### Powers of the President

**The President shall be Commander in Chief of the Army and Navy of the United States.**

—Article II, Section 2

### Powers of Congress

**The Congress shall have power. . . to declare war.**

—Article I, Section 8

## More About the Case

Before 1700 there were few settlements in Kuwait. In 1710 an Arabian people, the Arab Anaiza, migrated into the Kuwait Bay area to escape massive drought in Arabia. Here they built a port that later became the city of Kuwait. As trade increased, the group elected Sabah I as their ruler. The Al-

Sabah family has ruled Kuwait since 1756. A few years later Britain used Kuwait as a point from which to ship mail to Syria. British interest in the area grew because of Kuwait's strategic location. By 1899 Britain concluded a treaty with the Al-Sabah ruler to provide for the defense of the area.

At the same time, the Framers wanted the new nation to be able to defend itself, especially against surprise attacks. They believed command of military forces required the unified leadership that only a single person, the President, could give. Thus, the Constitution gave the President power as commander in chief.

The constitutional debate between President Bush and congressional power unfolded gradually in the autumn of 1990. Following the Iraqi invasion in August, Bush had used his authority as commander in chief to build up American forces in the Persian Gulf without asking for congressional approval.

Initially, Congress offered little resistance to Bush's actions. Congress was not in session in August when Bush sent the first troops to the Persian Gulf. When lawmakers were busy running for reelection in September and October, they had little to say.

Many members of Congress feared that challenging the President's actions would make Saddam Hussein think that Americans were divided. "It's awfully difficult for us to do anything of substance without creating the impression of . . . divisiveness," said Representative Lee Hamilton.

Further, there were real political risks. If Bush chose war and was successful, lawmakers who opposed the President could become unpopular.

After Bush ordered more troops to the Persian Gulf in November, however, the political pressure for Congress to use its constitutional war powers grew dramatically. Lawmakers could no longer remain silent with two huge armies, bristling with modern weapons, squared off against each other in the Persian Gulf region.

By mid-December a full-scale debate on the President's war powers was underway in the Washington courtroom of Federal Judge Harold Greene. Led by Representative Donald Dellums, 54 lawmakers asked the court for an injunction to stop President Bush from attacking Iraq without the consent of Congress.

**Congressional Argument** In court, advocates of congressional authority focused on Article I, Section 8, of the Constitution. Representative Dellums argued: "The Constitution clearly gives Congress the right to declare war. This situation is too grave for one person to take us into it alone." Eleven constitutional experts, including liberals and conservatives, prepared a brief supporting the Dellums lawsuit.



#### Going to War

Congress, in this cartoon's view, slept as Bush sailed to war. When Congress awoke, debate focused on executive versus congressional war-making powers.

Backers of congressional power pointed to the records of the debates at the Constitutional Convention to support their position. Duke law professor Walter Dellinger argued, "The discussions at the constitutional convention clearly suggest that the framers intended to give Congress the exclusive authority to determine the policy question of whether or not to go to war."

Lawmakers also contended that even though past Presidents had sent troops into combat without a congressional declaration of war, Congress had not lost the war power. Many such cases, lawmakers pointed out, were very limited, short-term events rather than major wars.

**The President's Response** Defenders of President Bush countered with their own interpretation of the Constitution. Secretary of State James Baker claimed that because the President had consulted regularly with congressional leaders, there was no need for a declaration of war.

Stuart Gerson from the Justice Department represented the President's position in court. Gerson argued that history provided many examples of Presidents using their power as commander in chief without waiting for a declaration of war. Thomas Jefferson, for example, sent the navy to attack the Barbary pirates without congressional approval. In addition, Gerson argued that nothing in the Constitution says Congress has to declare war before fighting begins.

During the 1930s oil was discovered in Kuwait. Drilling began in 1936 and by 1945 it became a major oil-exporting nation. With the influx of wealth came economic security, and political independence in 1961. Kuwait joined the Arab League that year and the United Nations in 1963.

Iraq's Saddam Hussein contended that Kuwait was actually a province of Iraq and should not be independent. Hussein used this argument to justify his 1990 invasion of the desert emirate.

Greene dismissed the lawsuit. In his ruling, the judge stated that the issue of who could send American troops into war was a political question that Congress and the President must settle on their own.

**The Vote for War** The issue came to a head when the newly elected 102nd Congress convened on January 3. Moments after the opening session came to order, Senator Tom Harkin leapt to his feet, declaring that Congress could wait no longer to decide on peace or war. Harkin said war is “being talked about in coffee shops, in the work place, and in the homes. Now is the time and here is the place to debate.”

After months of avoiding asking for congressional approval, President Bush changed tactics. On January 8, he formally asked Congress for its support, and the White House circulated a draft resolution calling for congressional approval for the use of military force.

The mood was somber on January 9 when the formal debates began. Congressional aides and lawmakers’ families filled most seats in the House and Senate galleries. The general public had to wait three hours for seats. Long lines twisted through the Capitol hallways. “It’s history in the making” explained one visitor standing in line. Longtime observers of Congress called the speeches serious and often eloquent as the lawmakers rose to state their positions.

Senator Robert Dole said the time to approve the use of force had come. “Let’s not pull the rug out from under the President when the pressure is building on Saddam Hussein by the minute,” Dole urged. “Let’s don’t give him any relief.”

Representative Robert H. Michel said: “President Bush has openly and forthrightly asked for our help. How can we turn our backs on him?”

Representative David E. Bonior urged House members to “ask the same question that thousands of Americans are asking their families today. Is this cause for which you would ask your son or daughter to risk their life?”

Senator Sam Nunn wanted to let the economic sanctions weaken Iraq before authorizing war. “We are playing a winning hand. I see no compelling reason to rush to military action.”

After three days of debate, the Senate approved the use of military force by a vote of 52 to 47. In the House the vote was 250 to 183.

At a news conference moments after the votes,

President Bush said the action by Congress “unmistakably demonstrates the United States commitment to enforce a complete Iraqi withdrawal from Kuwait.”

## The Significance

On January 16, President Bush ordered American forces and their allies to drive Iraq out of Kuwait. Operation Desert Storm had begun. Massive air and ground attacks and American-led forces smashed the Iraqi forces in an amazingly short 42 days with minimal American casualties. On February 27, a triumphant George Bush announced a ceasefire, declaring “Kuwait is liberated, Iraq’s army is defeated.”

Would President Bush have attacked without congressional approval? No one can say for sure. History, however, clearly indicates that Presidents from Harry S Truman on have often chosen to send American forces into combat. At the same time, Presidents have almost always felt the need to consult with or involve Congress in such decisions.

The decision to go to war in the Persian Gulf shows how the constitutional principle of separation of powers shapes American government and politics today. One scholar calls separation of powers “an invitation to struggle”; it creates tension between the executive and legislative branches and brings the judgement of one branch to bear on the judgment of the other.

### Examining the Case

#### Reviewing Facts

1. Summarize why Congress delayed in reacting to President Bush’s buildup of American troops.
2. Explain why the Framers of the Constitution divided the war power.

#### Critical Thinking Skills

3. Evaluating Information Is it a good idea to require the President to get congressional approval before sending American forces into battle? Give reasons to support your answer.
4. Synthesizing Information Does the evidence in this case study support this hypothesis: separation of powers requires the President and Congress to cooperate. Explain your answer.

# GULF OF TONKIN RESOLUTION

On August 4, 1964, President Lyndon B. Johnson announced that two United States destroyers had been attacked in the Gulf of Tonkin—although this attack has never been confirmed. Nonetheless, Johnson ordered air strikes against North Vietnam and asked Congress for powers to take any necessary measures to repel attacks against the United States and to stop further aggression. On August 7 Congress approved these powers in the Gulf of Tonkin Resolution. Although Congress never officially declared war on North Vietnam, Johnson based increased United States involvement on the broad powers the resolution gave him. The United States role in the Vietnam War remains one of the most debated issues in American history.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United States or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

—JOINT RESOLUTION OF CONGRESS, H.J. RES. 1145, AUGUST 7, 1964

### Examining the Document

#### Reviewing Facts

1. Name the President of the United States who ordered air strikes against North Vietnam.
2. Explain why Congress issued the Gulf of Tonkin Resolution.

#### Critical Thinking Skills

3. Making Inferences Why do you think Congress was so eager to support the President in the Gulf of Tonkin Resolution?

# WOODROW WILSON'S WAR MESSAGE

When World War I broke out in Europe in August 1914, President Woodrow Wilson asked Americans to remain neutral. Yet events over the next 31 months drew the nation ever closer to conflict. Finally, on April 2, 1917, Wilson asked Congress to declare war.

I have called Congress into extraordinary session because there are serious, very serious choices of policy to be made, and made immediately, which it was neither right nor constitutionally permissible that I should assume the responsibility of making.

With a profound sense of the solemn and even tragical character of the step I am taking and of the grave consequences which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that the Congress declare the recent course of the Imperial German Government to be in fact nothing less than war against the Government and people of the United States.

Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic Governments, backed by organized force which is controlled wholly by their will. We have seen the last of neutrality in such circumstances.

It is a fearful thing to lead this great, peaceful people into war, into the most terrible and disastrous of all wars; civilization itself seeming to be in the balance.

We shall fight for the things which we already carry nearest our hearts—for democracy, for the right of those who submit to authority to have a voice in their own Government, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free.

To such a task we can dedicate our lives and our fortunes, everything that we are and every thing that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness, and the peace that she has treasured.

—WOODROW WILSON, 1917

### Examining the Document

#### Reviewing Facts

1. Explain why Wilson rejects continued neutrality.
2. Cite the principles for which Wilson states the American people will fight.

#### Critical Thinking Skills

3. Expressing Problems Clearly What issue does Wilson believe justifies war?