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War Budgeting Strategies:

**Case Studies of The Gulf War
and The Iraq War**

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I. INTRODUCTION

“The [constitutional] system will not hurry us into war; it is calculated to guard against it,” James Wilson assured a Pennsylvania ratifying convention in 1788.¹ To this end, the Constitution entrusts Congress with the power to declare war, the power to raise and support armies and the broader power of the purse — each of which appears to be an *ex ante* check on the exercise of presidential war power. It is not always so in practice. John Hart Ely has famously argued that, even in the absence of a war declaration or clear authorization, a pattern of congressional appropriations to support an ongoing war effort can serve as a proxy for congressional war authorization.²

This paper presents two case studies in war budgeting that test the Ely thesis.

We first provide an account of Operation Desert Storm and Desert Shield. The Gulf War is a striking model of how the Executive can effectively use the tools of national security budgeting to launch and fight a war in advance of appropriations. The Gulf War’s curious chronology casts considerable doubt on whether defense appropriations can be construed as a meaningful congressional choice to authorize war. President George H.W. Bush deployed 150,000 thousand U.S. troops to the Gulf region before he asked for his first supplemental appropriations in mid-September — to fund the troops already serving in the field. Nearly 400,000 troops were amassed in the war zone before Bush sought congressional authorization for a war which the military was already

¹ 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 583 (Merrill Jenson ed., 1976).

² JOHN HART ELY, WAR AND RESPONSIBILITY: CONSTITUTIONAL LESSONS OF VIETNAM AND ITS AFTERMATH 12-46 (1993) (concluding that the Vietnam War was effectively authorized by a pattern of congressional appropriations). *See also Orlando v. Laird*, 443 F.2d 1039 (2d Cir. 1971) (finding that Congress “ratified the executive’s initiatives [in the Vietnam War] by appropriating billions of dollars to carry out military operations in Southeast Asia”). *But see* William Van Alstyne, *Congress, the President, and the Power to Declare War: A Requiem for Vietnam*, 121 U. Pa. L. Rev. 1, 23 (1972) (finding no authorization based on appropriations).

poised to fight. Congress authorized the use of force in January 1991, but did not appropriate funds for Desert Storm until April 1991; in the meantime, the entire Gulf War was waged and won. Remarkably, a war that would eventually cost \$61.1 billion was fought with only \$1 billion in specific appropriations prior to the hostilities. We examine how this was accomplished in Part II.

We then turn in Part III to an account of the Iraq War and the broader Global War on Terror (GWOT). Like the first Gulf War, the Iraq War began with a massive deployment of troops prior to authorization or specific appropriations. As with many recent wars, Iraq War funding began with a series of supplemental request, but in a departure from precedent, this practice has continued through five years of the conflict. Several high-ranking officers have condemned the use of sporadic supplemental appropriations to fund what is now a long-term war effort, arguing that it impairs transparency and congressional oversight while also overcomplicating military planning. By June 2006, Congress' use of supplemental appropriations and emergency-designated funds constituted 91% of the \$331 billion appropriated for the Iraq War and the GWOT. As we attempt to show, the principal reason for the Administration's reliance on supplemental appropriations appears to be the budgetary latitude it gives the Defense Department.

II. FUNDING THE PERSIAN GULF WAR

This account of how the Gulf War was funded begins with a chronology of the Gulf War military operations in Part II.A. We then proceed in Part II.B. to outline in brief all significant congressional participation in the Gulf War, including three

appropriations bills. This section also introduces the existing discretionary spending authority the Pentagon relied upon during the Gulf War. With this basic military and congressional action timeline in mind, we turn in Part II.C to a detailed analysis of how the Pentagon actually paid for the Gulf War. Finally, in Part II.D we discuss some of the policy implications raised by the Bush Administration's approach to funding the Gulf War.

A. The Military Timeline

The Gulf War was a conflict between Iraq and a U.S.-led 34-nation coalition authorized by the United Nations to oust Iraqi forces from Kuwait and restore the government of the deposed Emir. Coalition military operations occurred in two phases. Operation Desert Shield was the massive deployment of U.S. military forces and months-long standoff in the Persian Gulf. Commenced only days after Iraq's invasion of Kuwait, Desert Shield was initially described as a wholly defensive mission to prevent Iraq from invading Saudi Arabia. But it soon became clear that U.S. troops were positioned to enforce the United Nations Security Council's demand for Iraq's withdrawal from Kuwait. Those forces sprung to action in Operation Desert Storm, the offensive military campaign that expelled Iraqi forces from Kuwait.

1. The Invasion of Kuwait

By mid-July 1990, Iraq was on the precipice of war. Saddam Hussein alleged that Kuwait had overdrawn its share of the Rumalia oilfield, which straddled the Iraq-Kuwait

border, and that the Kuwaitis were driving down oil prices by exceeding their production quotas.³ Saddam threatened military action on July 17.⁴

On August 2, 1990, Iraqi tanks rolled into Kuwait.⁵ By the end of the day, the mission was complete, and Iraq installed a provisional government to replace the Kuwaiti regime. Six days later Iraq “annexed” Kuwait as its 19th province. The United Nations responded with Resolution 660, condemning the invasion and calling for Iraq to withdraw — the first in a series of resolutions designed to thwart Iraqi aggression.⁶

2. Operation Desert Shield

Even before the Iraqi invasion, the United States had responded to Saddam’s initial threat by deploying six combat ships to the Persian Gulf. The U.S. deployment accelerated in August. In response to a request for military assistance from King Fahd of Saudi Arabia, President George H.W. Bush ordered a full-scale deployment U.S. forces to Saudi Arabia “in the cause of peace.”⁷ Congressional notification was at this point limited to a phone call from Bush to Senate Majority Leader George Mitchell.⁸

August 9 marked the first official presidential communication with Congress. The President submitted a report to Congress, “consistent with the War Power Resolution,” notifying them of his decision to begin a deployment that would in a month’s time reach 50,000 troops.⁹ Bush followed this report with an August 28 meeting

³ARTHUR BLAIR, *AT WAR IN THE GULF: A CHRONOLOGY* 5 (1992)

⁴*Id.* at 6.

⁵*Id.* at 12.

⁶*Id.* at 12.

⁷Peter Raven-Hansen and William C. Banks, *From Vietnam to Desert Shield: The Commander in Chief’s Spending Power*, 81 IOWA L. REV. 79, 87 (1995).

⁸*Id.* at 88

⁹*Iraq-Kuwait Crisis : A Chronology of Events*, Cong. Research Serv. Rept. 92-372 at 87 (1991) (Hereafter “IKC Chronology”).

with 170 Members of Congress in which he stated his objective: “the immediate, complete and unconditional withdrawal of all Iraqi forces from Kuwait.”¹⁰ By September 6, troop levels in the region reached a reported 100,000-strong, supported by seventy ships and 300 aircraft.¹¹ Bush ordered the Navy to stop any Iraqi oil exports as well as ships hauling cargo embargoed by U.N. Security Council Resolution 661, which barred trade with Iraq.

This deployment was unchecked by Congress and steered by public opinion.¹² Reflecting on the August deployment, then-Defense Secretary Dick Cheney remarked, “it was an advantage that Congress was out of town. . . . [W]e could spend August doing what needed to be done rather than explaining it to Congress.”¹³ Over the course of six weeks, the ranks of Operation Desert Shield had grown to 150,000 troops by September 15 — with no prior congressional appropriation.

On November 8, 1990, the President confirmed that he was indeed preparing for an offensive mission.¹⁴ By January 1991, the United States was on the brink of war with Iraq. The American military presence in Saudi Arabia had swelled to 325,000 troops,¹⁵ all without prior congressional authorization. U.N. Security Council Resolution 678 had authorized its member states to use “all means necessary” to enforce the previous U.N. Resolutions if Iraq did not withdraw from Kuwait by January 15, 1991. This deadline would be the starting pistol for the U.S. liberation of Kuwait. One week before the

¹⁰ *Id.* 81.

¹¹ Raven-Hansen, *supra* n. 7 at 86.

¹² Blair, *supra* n. 3 at 27.

¹³ *Id.*

¹⁴ IKS Chronology, *supra* n. 9 at 1.

¹⁵ Blair, *supra* n. 3 at 58.

deadline, with U.S. and allied troops amassed in the Gulf region, President Bush finally secured a Congressional Joint Resolution authorizing the use of force against Iraq.

3. Operation Desert Storm

Two days after the U.N. deadline, “the winds of Desert Storm began howling across Iraq.”¹⁶ U.S. and coalition forces launched a devastating air campaign against Iraqi military and civilian infrastructure targets that ran from January 17 through February 24. The air phase also decimated much of the Iraqi air force.

The Allied ground assault phase began on February 24 and lasted just 100 hours. Iraqi forces were quickly routed and retreated to Iraq via the four-lane highway so heavily bombarded by U.S. war planes that it became known as the “Highway of Death.” The United States called a ceasefire on February 27, 1991. By February 28, Iraqi forces had been vanquished and cessation of hostilities was declared. Ceasefire negotiations began on March 1, and by March 17, the first phase of U.S. redeployment home began. The ceasefire ultimately took effect on April 11, 1991.

B. Congressional Actions and Pre-Existing Statutory Authority

The first formal congressional action came on October 1, when Congress passed and the President signed a continuing resolution that appropriated just over \$2 billion for Desert Shield, authorized the transfer of \$75 million from various defense accounts to the Desert Shield operations, and created the Defense Cooperation Account (DCA) to receive

¹⁶ Blair, *supra* n. 3 at 77.

contributions from allies to fund the cost of Desert Shield.¹⁷ On October 1, the House of Representatives also passed a resolution that supported the President's deployment of forces to defend Saudi Arabia.¹⁸ The Senate followed suit with a more limited resolution supporting the President's actions in the U.N. and his demand for Iraq to withdraw from Kuwait.¹⁹ Neither resolution was intended to authorize the offensive use of military force against Iraq, though both implied that U.S. military forces could defend themselves in Saudi Arabia.²⁰

The second congressional appropriations act linked to the Gulf War was the general Defense Appropriations Act for FY1991, passed on October 28. This bill appropriated to the Defense Department \$1 billion of allied contributions drawn from the Defense Cooperation Account. It would be the only specific prior appropriation of the conflict.

One week after the President requested that Congress pass a resolution authorizing the use of all means necessary to restore Kuwait, the House and Senate obliged. Both houses passed a resolution authorizing the President to use force provided he certified to Congress that diplomatic efforts to resolve the crisis had failed. President

¹⁷ Appropriations for Operation Desert Shield, Fiscal Year 1991, Pub. L. No. 101-403, § 2608(b), 871 (1990).

¹⁸ H.J.Res. 658 (1990).

¹⁹ S.Con.Res. 147 (1990); IKC Chronology, *supra* n. 9 at 73.

²⁰ *Iraq/Kuwait Crisis : Congressional Action Through 1991*, CRS Rpt. 91-156F at 87 (1991) (Hereafter, 'IKC Cong. Action'). In the fall, several Republican Senators called on the Administration to seek congressional approval for further military deployments to Saudi Arabia. The President rejected the demand. *Id.* at 68. On October 20, 45 Member of Congress filed suit in U.S. district court seeking to require the president to obtain prior congressional authorization before taking offensive action. *See id.* at 75.

Bush signed the bill into law on January 14, 1991 — a day before the U.N. authorization to use force would take effect.²¹

No further appropriations were provided until an April 1991 supplemental,²² wherein Congress authorized the transfer of \$42.6 billion from the DCA to fund incremental costs of Operation Desert Storm and appropriated an additional \$15 billion to a Persian Gulf Regional Defense Fund. The Fund was to be tapped only when the DCA was depleted.

This brief outline begins to reveal the peculiar sequence of congressional appropriations in the Gulf War (see Appendix 1 for a timeline). Congress made no specific prior appropriations until fully two months into Desert Shield, and appropriations were made for Desert Storm only after the cessation of hostilities. Congress appropriated from the U.S. Treasury a mere \$2.1 billion to fund a war whose incremental costs would eventually exceed \$60 billion. Before descending further into the details of how this was possible, let us briefly note four fiscal strategies that Congress had made available to the Pentagon long before the run up to the Gulf War.

As a general matter, the Defense Department has considerable latitude within lump-sum program accounts.²³ This latitude is augmented by the common tools of “creative national security spending,” all statutorily authorized.²⁴

²¹ U.N. Resolution 678 (Nov. 29, 1990). On January 16, President Bush submitted that certification that peaceful and diplomatic means had failed to resolve the crisis. *See* IKC Chronology, *supra* n. 9 at 4.

²² *See* Operation Desert Shield/Desert Storm Supplemental Appropriations Act of 1991, P.L. 102-28, 105 Stat. 161 (1991).

²³ Raven-Hansen, *supra* n. 7 at, 90-91.

²⁴ LOUIS FISHER, *PRESIDENTIAL SPENDING POWER*, 7 (1975).

Feed & Forage Act. As a general matter, the Executive Branch is constitutionally and statutorily barred from spending or obligating the Treasury in excess of appropriations.²⁵ But war spending is different, and Congress has made it so. A law of Revolutionary War vintage authorizes the President essentially to take out a line of credit to sustain military forces without prior legislative approval. Specifically, the FFA grants the Defense Department authority to overobligate the Treasury for certain defined military expenses for the current year.²⁶ The Pentagon traditionally “considers the use of the FFA to cover increased cost requirements as a last resort when all other options have been exhausted.”²⁷ The FFA is regarded as stopgap purchasing authority to sustain the military when Congress has failed to appropriate necessary funds or new contingencies have arisen. To invoke feed and forage authority, the Secretary of Defense need only notify Congress and report quarterly on the obligations incurred pursuant to it.²⁸ Once the necessary funds are obligated, Congress has no choice but to liquidate the obligations with subsequent appropriations (thus satisfying the Appropriations Clause).²⁹

Acceleration Authority. Ordinarily, all federal spending must be “apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period.”³⁰ But the President has

²⁵ The Appropriations Clause of the Constitution bars expenditures exceeding funds appropriated “by Law,” ART. I, §9, and the Antideficiency Act (ADA) criminalizes both expenditures and obligations-to-pay exceeding available appropriations. 31 U.S.C.A. §1341 (2005).

²⁶ 41 U.S.C. 11(a). For a thorough treatment of the history of the FFA, see FISHER, *supra* n. 24 at 238–47.

²⁷ See GAO Report, “Bosnia: Costs Are Exceeding DOD’s Estimate (Briefing Report, 07/25/96, GAO/NSIAD-96-204BR) available at <http://www.fas.org/man/gao/ns96204.htm>.

²⁸ 41 U.S.C. § 11(b).

²⁹ FISHER, *supra* n. 24 at 238.

³⁰ 31 U.S.C. §1515 (“No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating

authority under Section 2201 to accelerate expenditures or obligations faster than Congress anticipated and provided for. He can in some cases spend in one month what was appropriated for one year. Under Section 2201(a), if the President determines it is “necessary in the interest of national defense,” he may exempt from the apportionment requirement any “appropriations funds and contract authorizations available for military functions of the Defense Department.”³¹

Reprogramming Authority. The Executive Branch commonly uses reprogramming authority to shift funds *within* an appropriation account. This flexibility permits an agency to spend funds in a particular line-item.³² As is commonly permitted, reprogramming authority was provided in defense appropriations for FY 1990 and FY 1991.³³

Transfer Authority. Yearly congressional appropriations acts routinely permit the Pentagon to transfer up to a specified amount *across* appropriations accounts. The shifting of funds between appropriations must be authorized, and Congress provides General Transfer Authority as a dollar figure or a percentage limit on the amount of an

as a service in the Navy, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.”). A provision in 10 U.S.C. §2201 extends the FFA to also authorize the costs of newly activated troops. Section 2201 cross-references the feed and forage provision, but the costs it describes for “additional members” are a discrete category.

³¹ 10 U.S.C. §2201(a).

³² See Harvard Law School Federal Budget Policy Seminar Briefing Paper 8, “The Power to Reprogram, Rescind and Impound” 5 (2005). According to the GAO, “an agency is free to reprogram unobligated funds as long as the expenditures are within the general purpose of the appropriation and are not in violation of any other specific limitation or otherwise prohibited.” GENERAL ACCOUNTING OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, v. 1, 2-31 (1998). Near the close of the Vietnam War, Congress closed a potential funding loophole by prohibiting reprogramming “where the item for which reprogramming is requested has been denied by the Congress. Continuing Appropriations Act of 1974, P.L. 93-52, § 745, 87 Stat. 130, 1046 (1973).

³³ Department of Defense Appropriations Act of 1990, P.L. 101-165, § 9011, 103 Stat. 1112, 1131 (1989).

account which may be transferred or increased.³⁴ The transfer cap for the Defense Department was \$3 billion in FY1990³⁵ and \$2.25 billion in FY1991.³⁶

C. Expenditures

The General Accounting Office estimates that the total cost of the Persian Gulf War was \$120 billion. This aggregate includes about \$50 billion for “sunk” costs — direct and indirect costs to raise, maintain and support a force of 540,000 personnel. Total cost also includes \$10 billion of other related costs, such as forgiveness of Egypt’s \$7 billion debt to the United States. Incremental costs reached \$61.1 billion.³⁷ Incremental costs are “only those costs that would not have been incurred except for the operation.”³⁸ For example, active military duty pay would be a sunk cost, but the added expense of imminent-danger pay and the increase in pay for reservists called to active duty would be incremental. While sunk costs are provided for by the normal course of appropriations, incremental costs represent the true price of the Gulf conflict — the “but for” cost of war fighting. We focus our treatment on incremental costs.

We have found it most useful to unpack the Gulf War outlays and obligations into three distinct war budgeting phases. We call these phases the Initial Build-Up, the Standoff and Desert Storm, and the Post-Ceasefire Phase.

³⁴ WILLIAM C. BANKS AND PETER RAVEN-HANSEN, NATIONAL SECURITY LAW AND THE POWER OF THE PURSE 77 (1994).

³⁵ Department of Defense Appropriations of 1990, P. L. 101-165, § 9011, 103 Stat. 1112 (1989).

³⁶ Department of Defense Appropriations Act of 1991, P.L. 101-511, § 8007, 104 Stat. 1856, 1875-76 (1990).

³⁷ U.S. Government Accounting Office, *Operation Desert Shield/Storm: Update on Costs and Funding Requirements*, GAO/NSIAD-92-194 (1992) (Hereafter GAO, *Desert Shield/Storm Update*). Of this \$611 billion, the GAO estimated that \$7 billion would not require funding. Expenses such as assistance-in-kind provided by allies, for example, required no “appropriation,” in contrast to financial assistance of allies, the disbursement of which Congress controlled.

³⁸ *Id.*, *Operation Desert Shield/Storm: Costs and Funding Requirements*, GAO/NSIAD-91-304 (1991) (Hereafter, GAO, *Desert Shield/Storm Costs*).

1. The Initial Build-Up

The Initial Build-Up occurred in the two final months of Fiscal Year 1990—from August 7 through September 1990. During this phase, President Bush deployed roughly 200,000 troops to Saudi Arabia,³⁹ without using a dime specifically appropriated for that deployment. The Pentagon invoked the Feed and Forage Act to obligate approximately \$2.1 billion.⁴⁰ To satisfy these costs incurred for the Initial Build-Up, the October supplemental provided \$2 billion in appropriations and \$75 million⁴¹ in additional FY1990 transfer authority which was to be used exclusively to “liquidate obligations undertaken pursuant [to the Feed and Forage Act].”⁴² This was, in effect, a *retrospective* appropriation for the first two months of Desert Storm. The “sunk” costs of the first two months were drawn from previously appropriated funds, with heavy reliance on existing reprogramming authority to reallocate approximately \$625 million in funds from programs with “less immediate funding needs.”⁴³ But because the Initial Build-Up occurred near the close of the fiscal year, the Pentagon had exhausted almost all of its \$3 billion of transfer authority for FY1990,⁴⁴ so this tool was of limited use during August and September.⁴⁵

The Initial Build-Up was not funded by major allied burden-sharing, as there was no authorized fund to receive and disburse contributions from foreign states until the October supplemental created the Defense Cooperation Account. The DCA would be

³⁹ Blair, *supra* n. 3 at 32.

⁴⁰ GAO, *Desert Shield/Storm Costs*, *supra* n. 38 at 4.

⁴¹ Raven-Hansen mistakenly lists this figure as \$175 million, but Title II of the October supplemental provided only an additional \$75 million. *See* Raven-Hansen, *supra* n. 7 at 91.

⁴² Appropriations for Operation Desert Shield, Fiscal Year 1991, P.L. 101-403, § 2608(b), 871 (1990).

⁴³ GAO, *Desert Shield/Storm Costs*, *supra* n. 38 at 3.

⁴⁴ Department of Defense Appropriations, Fiscal Year 1990, P.L. 101-165, § 9011, 103 Stat. 1112 (1989).

⁴⁵ Department of Defense Appropriations Act of 1991, P.L. 101-511 (1990).

central to funding of the remaining six months of the Gulf War military campaign. In early August, the Bush Administration began urging allies to commit manpower and money to Operation Desert Shield.⁴⁶ Saudi Arabia, Kuwait and other nations in the region quickly pledged major financial assistance. Defense Secretary Cheney forecasted that foreign contributors would pick up the tab for half of the then-estimated \$15 billion in cost of Operation Desert Shield.⁴⁷ In fact, foreign cash and in-kind contributions would ultimately finance \$54 billion of the \$61.1 billion incremental cost of the entire Gulf War.⁴⁸

There was, however, much congressional consternation over the Administration's initial plans to rely on existing statutory authority to receive and spend foreign contributions unencumbered by the congressional appropriations process. The Administration hoped to use statutory authority from 1954 that permitted the Secretary of Treasury to receive and allocate gifts of "money or other intangible personal property made on the condition that it be used for a particular national security purpose."⁴⁹ Congress was having none of it. Senator Robert Byrd led the charge against the creation of an unsupervised "huge defense slush fund" that would permit the president to essentially bypass Congress' most potent check on executive war powers.⁵⁰ The October supplemental ultimately repealed the existing statutory gift discretion, and replaced it with the Defense Cooperation Account.⁵¹ The Secretary of Defense was authorized to accept contributions of money or property for defense programs, but disbursements from

⁴⁶ See Raven-Hansen, *supra* n. 7 at 87-89.

⁴⁷ Statement by Defense Secretary Richard B. Cheney, *Crisis in the Persian Gulf Region: U.S. Policy Options and Implications*, Hearings Before the Sen. Comm. on Armed Services, 101st Cong. (1990)

⁴⁸ Dep't of Defense, *Conduct of the Persian Gulf War: Final Report to Congress* 60 (Apr. 1992).

⁴⁹ Act of July 27, 1954, P.L. 83-537, 68 Stat. 566, 50 U.S.C. § 1151(a) (1988).

⁵⁰ See Raven-Hansen, *supra* n. 7 at 89.

⁵¹ Appropriations for Operation Desert Shield, Fiscal Year 1991, P. L. 101-403, § 2608(b), 871 (1990).

the Account would have to be authorized and appropriated by Congress like any other federal expenditure. The only exception was for tangible property, which could be used in its donated form without specific authorization.⁵² These funds and in-kind contributions would eventually fund 88% of the Gulf War incremental costs, beginning with the next phase of war-spending.⁵³

2. The Standoff and Desert Storm

The Standoff and Storm spanned from October 1990 through April 1991. Based on available reports, it appears that the Defense Department incurred incremental costs totaling approximately \$26 billion during this phase.⁵⁴ The Pentagon also incurred costs which were covered by in-kind contributions (roughly \$5.7 billion worth) of items such as fuel, as well as \$1.2 billion in lost equipment and consumed munitions that were never replaced.⁵⁵ Over these six months during which the military campaign was threatened, fought and won, Congress granted only one appropriation. The Defense Appropriations Act of 1991, passed on October 27, 1990, appropriated \$1 billion from the DCA to be used “only to reimburse incremental expenditures made for fuel, transportation, equipment, maintenance, and purchases from stock funds in support of Operation Desert Shield.”⁵⁶ This legislation also granted transfer authority of \$2.25 billion for “unforeseen military contingencies” for FY1991. The language of the Act indicated that Congress assumed it would later use supplemental appropriations to pay for Gulf region

⁵² *Id.*

⁵³ Major contributors were Saudi Arabia, Kuwait, United Arab Emirates, Germany, Japan and Korea. See GAO, *Desert Shield/Storm Costs*, supra n. 38 at 3.

⁵⁴ *Id.* at 4. In addition, the DOD appears to have “accrued” liability – but not *obligated* — an additional \$9.7 billion for operations during this period. These were essentially costs on the DOD’s balance sheet for accounting purposes, but they were not paid until the Post-Ceasefire phase. *Id.*

⁵⁵ *Id.*

⁵⁶ Department of Defense Appropriations Act of 1991, P. L. 101-511 (1990).

operations.⁵⁷ In addition, the Administration and Congress reached a long-term compromise in late October 1990 to treat the incremental costs of the Gulf War as “emergency funding requirements” exempt from the defense spending ceilings contained in the budget agreement for 1991.⁵⁸

The principal spending tools used in this phase were obligations authorized by the Feed and Forage Act, accelerated spending, and transfer and reprogramming.⁵⁹ These existing tools were greatly enhanced by new spending latitude conferred by the October supplemental. The October supplemental had increased the DOD’s obligational authority to more than \$260 billion and exempted “projects, activities, operations or organizations related to ‘Operation Desert Shield’” from the general prohibition on transferring and reprogramming to initiate *new* programs.⁶⁰ With regard to accelerated spending, the supplemental entirely *waived* the apportionment requirements for Desert Shield programs.⁶¹ Because the Standoff and Storm phase occurred during the first five months of FY1991, a year’s worth of funding was freshly available. The DOD was in essence able to “borrow against future quarterly budget allocations” as it saw fit.⁶² Using these creative spending tools supplemented by \$1 billion from the DCA, the Pentagon was able to finance the major hostilities of the Persian Gulf conflict.

⁵⁷ IKC Congressional Action, *supra* n. ___ at 5.

⁵⁸ Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, 104 Stat. 1388 (1990); *see also id.* at 5.

⁵⁹ GAO, *Desert Shield/Storm Costs*, *supra* n. ___ at 3.

⁶⁰ Appropriations for Operation Desert Shield, P.L. 101-403, § 102 (1990).

⁶¹ *Id.*

⁶² GAO, *Desert Shield/Storm Costs*, *supra* n. ___ at 3.

3. The Post-Ceasefire Phase

It was not until after the April 11, 1991 ceasefire that Congress provided appropriations to replenish DOD accounts which had been obligated and depleted to finance the \$26 billion in costs thus far. In April 1991, Congress authorized and appropriated \$42.6 billion from the Defense Cooperation Account to DOD accounts and appropriated \$15 billion to a newly established Persian Gulf Regional Defense Fund.⁶³ The Regional Defense Fund, however, was created on the condition that it be used only after the DCA was exhausted.⁶⁴ This act was followed by a subsequent appropriation in April for an additional \$655 million from the DCA,⁶⁵ and another \$252 million appropriation of DCA funds in June 1991.⁶⁶ In total, Congress appropriated \$44.5 billion from the DCA for FY1991, for the dual purposes of *retrospectively* paying down the \$26 billion cost of the Standoff and Storm phase and *prospectively* to place funds at the Defense Department's disposal for any "incremental costs associated with Operation Desert Storm."⁶⁷

The DOD, however, did not withdraw all of the authorized DCA funds within FY1991, and about \$8.4 billion in appropriations authority expired.⁶⁸ In December 1991, Congress again appropriated \$10.4 billion for FY1992 – \$6.3 billion of expired FY1991

⁶³ See Operation Desert Shield/Desert Storm Supplemental Appropriations Act of 1991, P.L. 102-28, 105 Stat. 161 (1991); Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, P.L. 102-25, § 101, 105 Stat. 75, 78 (1991).

⁶⁴ GAO, *Desert Shield/Storm Costs*, *supra* n. ___ at 3.

⁶⁵ Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, P.L. 102-27, 105 Stat. 130 (1991).

⁶⁶ Dire Emergency Supplemental Appropriations from Contributions of Foreign Governments, P.L. 102-55, § 502, 105 Stat. 290, 550 (1991).

⁶⁷ See Operation Desert Shield/Desert Storm Supplemental Appropriations Act of 1991, P.L. 102-28, 105 Stat. 161 (1991).

⁶⁸ GAO, *Desert Shield/Storm Costs*, *supra* n. ___ at 3.

appropriations and \$4.1 billion from DCA in new appropriations.⁶⁹ Over the course of FY1990-92, DOD and other agencies had utilized \$48.6 billion in direct spending — \$46.5 billion for the DCA and \$2.1 billion from the U.S. Treasury to pay the incremental costs of the Gulf War. Later disbursements from the DCA would increase the total DCA share of the war costs to \$48.4 billion. Based on the GAO’s recommendations, Congress then rescinded the nearly \$15 billion that it had appropriated in the event foreign contributions were insufficient.⁷⁰

In the final analysis, the total incremental “gross” cost of the Gulf War would reach \$61.1 billion. Of this amount, the total \$50.5 billion “cash” cost of the war was funded almost exclusively by DCA monies, save the \$2.1 billion Congress retrospectively appropriated for the Initial Build-Up phase.⁷¹ The remaining \$10.6 billion of the “gross” cost was comprised of in-kind contributions from allies, the value of equipment lost and munitions consumed but not replaced, and \$3.9 billion as the present value of long-term personnel benefits.⁷²

C. Analysis of Gulf War Budgeting Tools

The Bush Administration’s effective use of the tools of national security spending discretion made the Gulf War something of a “fiscal fait accompli.”⁷³ The President’s first funding request was for troops already serving in harm’s way. Operation Desert Shield would become the largest U.S. troop deployment overseas since the Vietnam War,

⁶⁹ *Id.* at 2-4.

⁷⁰ U.S. General Accounting Office, *Desert Shield and Desert Storm Reports and Testimonies: 1991-1993* at 1-2 (1994).

⁷¹ DEM. STAFF OF H. BUDGET COMM., 108RD CONGRESS, ASSESSING THE COST OF MILITARY ACTION AGAINST IRAQ: USING DESERT SHIELD/DESERT STORM AS A BASIS FOR ESTIMATES 6 (Comm. Print 2002).

⁷² *Id.*

⁷³ RV

without a single specific prior appropriation.⁷⁴ The President's last major funding request was for a war already magnificently fought and won. On these bare facts, one might detect an abuse of executive power, but it appears that the Pentagon merely used the statutory tools of "creative national security spending" granted by Congress.⁷⁵

The Feed and Forage Act raises perhaps the most interesting questions because it alone permits the Executive to obligate the Treasury for expenses that were never contemplated by Congress. Defense Secretary Cheney's resort to the FFA during the Gulf War was unequalled in scale before or since, but it was not the first time the authority was used to deploy troops overseas. The FFA may sound like a dusty, forgotten provision for hungry foot soldiers and cavalry horses, but the Executive Branch has relied upon its authority several times in modern warfare⁷⁶— including in the Eisenhower Administration, Kennedy Administration,⁷⁷ Nixon Administration,⁷⁸ Clinton Administration,⁷⁹ and George W. Bush Administration.⁸⁰

⁷⁴ Raven-Hansen, *supra* n. 7 at 85.

⁷⁵ LOUIS FISHER, *PRESIDENTIAL SPENDING POWER*, 7 (1975).

⁷⁶ In recent history, the Defense Department has invoked or exercised feed and forage authority largely to fund new military operations, to heighten readiness in response to emergencies, and to meet contingency costs of existing operations.

⁷⁷ The authority was used to fund the 1958 deployment of Marines to Lebanon, the 1962 Berlin mobilization, and the initial deployment of troops to Vietnam. Terry M. Moe and William G. Howell, "The Presidential Power of Unilateral Action," 15 *J.L. ECON. & ORG.* 132 (April 1999).

⁷⁸ During Vietnam War, the Nixon Administration publicly discussed but evidently never invoked the FFA; instead, the Pentagon aggressively used reprogramming and transfer authority. But during a Senate Appropriations Committee hearing in 1972 Defense Secretary Melvin Laird told the Senate Appropriations Committee in 1972 that the FFA would be "the only legislation which would permit us to operate" if Congress cut off funds. A year later, Defense Secretary Elliot Richardson told appropriators that if funds for the Cambodia bombing were cut off, "[W]e could invoke [the feed and forage law] authority." *BANKS AND RAVEN-HANSEN, supra* n. 24, at 72.

⁷⁹ The Clinton Administration used the FFA to finance \$127 million in contingency costs for the 1994 Operation Uphold Democracy in Haiti, and in 1966, the Defense Department invoked but never exercised the FFA to fund force protection measures in Saudi Arabia after the Khobar Tower bombings. United States Department of the Army, Historical Summary FY04, available at <http://www.army.mil/CMH/books/DAHSUM/1994/ch02.htm>.

⁸⁰ Exec. Order No. 13,223, 6 Fed. Reg. 48,202 ("Based upon my determination under 10 U.S.C. 2201(c) that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the

From its inception, feed and forage authority was understood as a lifeline for military commanders to sustain their units.⁸¹ The challenge of accurately funding distant armies by prior appropriation in the Nineteenth Century was complicated by limited transportation and communication between Washington, DC and military outposts.⁸² In addition, the part-time U.S. Congress sometimes failed to pass the yearly Army and Navy appropriations bill on time;⁸³ the modern full-time Congress has kept up that tradition of tardiness.

Though the FFA is infrequently invoked, it remains a useful bargaining chip precisely because it is a unilateral presidential spending option. Indeed, the Pentagon has dangled the prospect of feed and forage obligations before reluctant or hostile congressional appropriators.⁸⁴ The Nixon Administration drew withering criticism for

Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 11(a) of title 41, United States Code.”). On September 14, the President issued an executive order declaring a national emergency and invoking, inter alia, the special authority of the FFA to increase the active-duty strength of the armed forces. The Pentagon explained at the time that “[i]nvolving the FFA authorities will ensure the Department of Defense can fully support units of the U.S. armed forces involved in military operations and activities resulting from the terrorists attacks [of September 11].” Press Release, Dep’t of Defense, Department of Defense Invokes FFA (September 21, 2001). The Pentagon did not, however, ultimately need to use the authority because Congress provided the necessary appropriations in an emergency supplemental bill.

⁸¹ See *The Floyd Acceptances*, 74 U.S. 666, 684-85 (1868) (Nelson, J., dissenting). Dissenting in an 1868 Supreme Court case concerning the validity of certain War Department contracts, Justice Nelson described the purpose of the special authority:

The reason for this is obvious. The army and navy must be fed, and clothed, and cared for at all times and places, and especially when in distant service. The army in Mexico or Utah are not to be disbanded or left to take care of themselves, because the appropriation by Congress, for the service, has been exhausted, or no law can be found on the statute book authorizing a contract for supplies.

Id.

⁸² FISHER, *supra* n. 13, at 242.

⁸³ *Id.*

⁸⁴ At least two Secretaries of Defense have claimed the authority to invoke the feed and forage provision in the context of a budget stalemate. Testifying before Congress in 1971, Defense Secretary Eliot Richardson stated that the President could continue to bomb Cambodia even if Congress denied his request for an additional \$500 in transfer authority: “We will consider that we have the authority to do it anyway. We can find the money to do it anyway. . . . We could invoke section 3732 [FFA] authority.” FISHER, *supra* n. 13, at 238. In 2005, Secretary of Defense Donald Rumsfeld indicated in a letter to the chairman of the House Appropriations Committee that if Congress failed to pass a defense appropriations supplemental bill,

threatening to use the FFA to obligate funds for the bombing of Viet-Cong sanctuaries in Cambodia — in the teeth of an explicit congressional disapproval.⁸⁵

It could be argued that the original rationale and circumstances that necessitated the FFA — faraway armies linked to Washington via the Pony Express — are obsolete. But, resisting calls for repeal,⁸⁶ Congress appears to continue to see some warrant for uncommon spending flexibility to meet the uncommon exigencies of military operations. As one thoughtful advocate for repealing the FFA described the provision, “Basically it is open-ended authority, invoked whenever the Department of Defense decides it is time, invoked for whatever amounts the Department thinks necessary.”⁸⁷ The FFA does not require that the necessity be unanticipated, nor that it be the product of congressional inaction or error.⁸⁸ Remarkably, and somewhat ironically, it seems the President can more easily invoke feed and forage authority to *launch or expand* a military adventure than merely to continue funding an authorized war. Section 2201 covers all costs of newly activated “additional members” of the armed services *not* confined to the excepted expenses of Section 3237, but that special authority is not available to fund troops *already* on active duty.⁸⁹

the Pentagon “may need to invoke the FFA to sustain our deployed forces.” *See also*, Paul Corson, CNN Online, “Rumsfeld: ‘The Last thing we need is a draft,’” (April 27, 2005).

⁸⁵ *See* LOUIS FISHER, PRESIDENTIAL SPENDING POWER, 239 (1975).

⁸⁶ FISHER, *supra* n. 13, at 239.

⁸⁷ FISHER, *supra* n. 13, at 239.

⁸⁸ The text of the provision lists seven categories of excepted expenses applicable to the entire Armed Forces: “clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.” 41 USC 11(a). Section 2201 cross-references the feed and forage provision, but the costs it describes for “additional members” are a discrete category. Those costs are not limited to the seven categories of the original provision. The FFA authorization therefore operates at two tiers: the Pentagon may obligate necessary funds for the seven excepted expense categories for the entire armed forces, and it may obligate funds for *all costs* of newly activated units.

⁸⁹ 10 U.S.C § 2201(c) (“Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense

As we have reported, Congress not only countenanced but encouraged the President's use of the tools of transfer authority, reprogramming and accelerated spending during the Gulf War. These tools are significant delegations of discretion and control over the object and pace of defense spending. In the Gulf War, Congress enhanced their effectiveness by exempting transfer and reprogramming from the general rule against creating new programs, and it entirely lifted apportionment requirements.⁹⁰ Congress clearly agreed to treat the incremental costs of the Gulf War as "emergency funding requirements."⁹¹ The effect of this decision was to permit the Administration to spend and obligate as it saw fit, with full assurance that Congress would *retrospectively* appropriate funds for the incremental costs of war.

One reason for a wait-and-see approach to appropriations was allied-burden sharing. It was not clear in the Fall of 1990 precisely how much of the cost of war would be borne by American taxpayers. Pledges rolled in quickly, but cash contributions followed at a slower pace.⁹² As reflected by the condition attached to the Persian Gulf Defense Fund, Congress was understandably reluctant to appropriate funds from the U.S. Treasury beyond what was necessary. Through the Defense Cooperation Account, Congress was able to maintain nominal control over foreign contributions by retaining the power to authorize and appropriate, but it was a foregone conclusion that those funds would eventually reach DOD coffers. Ultimately, foreign funds were used to retrospectively pay for 95% of the \$50.5 billion "cash" cost of the war.

may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

⁹⁰ *Id.*

⁹¹ Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, 104 Stat. 1388 (1990); *see also id.* at 5.

⁹² U.S. General Accounting Office, *Allied Burden Sharing Efforts*, GAO/NSIAD-71 at 3 (1991).

III. FUNDING THE IRAQ WAR AND THE GLOBAL WAR ON TERROR

As with the Gulf War and many wars before it, the current War on Terror, principally comprised of the conflicts in Afghanistan and Iraq, was initially funded by supplemental appropriations.⁹³ In an unprecedented departure from past practice, however, the Bush Administration has continued to use supplemental requests for funding long after the initial stages of the war, rather than making submissions during the annual budget process.⁹⁴ In February 2007, the Administration included its request for war funding in its annual budget proposal for the first time.⁹⁵ But this request for FY2008 funding was amended on two subsequent occasions — the additional funds requested totaling more than \$47 billion.⁹⁶ The continuing funding dynamic between the President and Congress in this most recent war is altogether unprecedented and raises serious questions about the proper mechanisms by which Congress and the Executive seek to exercise their respective constitutional duties.

Though the conflicts in both Afghanistan and Iraq fit under the umbrella of the Global War on Terror (GWOT), this Part will discuss the early stages of conflict in these respective missions separately. The treatment of Afghanistan provides an illustrative comparison to the Iraq War budgeting strategies, which are the main focus of this Part. While the process of entering into and funding the early stages of the war in Afghanistan followed a more traditional and less controversial path, the process for funding the Iraq War has given rise to much criticism.

⁹³ See generally Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or in Supplemental Appropriations Bills*, June 13, 2006.

⁹⁴ *Id.*

⁹⁵ Sharon Pickup, *DOD Needs to Take Action to Encourage Fiscal Discipline and Optimize the Use of Tools Intended to Improve GWOT Cost Reporting*, GAO-08-68, November 6, 2007 at 10.

⁹⁶ *Id.* at 1.

A. The War in Afghanistan

The War in Afghanistan was commenced pursuant to a clear Congressional authorization.⁹⁷ In addition to expressly authorizing the war, Congress further pledged its support by passing, on the same day, a \$40 billion dollar supplemental to cover the initial costs of the military action, making \$20 billion available immediately, and providing the remaining \$20 billion in a supplement to the regular FY2002 Department of Defense (DOD) appropriations a short time later.⁹⁸

Although Congress may have deliberated under pressure before arriving at its decision to authorize war, to discern the source of such pressure one need only consider the severity of the attacks of September 11th. The pressure cannot reasonably be attributed to the President. Although the President did vow to “hunt down and punish those responsible”⁹⁹ for the attacks, there was no pre-authorization buildup of military presence near Afghanistan, as was the case in Vietnam and the first Gulf War. In fact, it was not until the day Congress voted overwhelmingly¹⁰⁰ in favor of authorizing the war that President Bush called up the National Guard and Reserves to active duty.¹⁰¹ It was not until October 7, 2001, nearly three weeks after President signed the bill that

⁹⁷ See Authorization for Use of Military Force, Pub. L. No. 107-40 (2001). The statute provides in pertinent part: “the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons....” Given the nature of the attacks, the structure of the organization that orchestrated them, and the Executive’s relative advantage in gathering foreign intelligence, Congress can perhaps be forgiven for not attempting to create an exhaustive list of countries against which military force was authorized.

⁹⁸ See Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, Pub. L. No. 107-38 (2001); Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, Pub. L. No. 107-117 (2001).

⁹⁹ U.S. Department of Defense Website, *Remembering September 11th Six Years Later*, available at <http://www.defenselink.mil/home/features/2007/9-11/timeline.html>.

¹⁰⁰ The House voted 420-1 and the Senate 98-0 in favor of authorization. See <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HJ00064> and link to S.J.Res.23, last visited April 18, 2008.

¹⁰¹ Id.

authorized the use of force, that the U.S. engaged in the first acts of war by bombing Al Qaeda training camps in Afghanistan.¹⁰²

As has been the practice in recent history, Congress funded the initial stages of the conflict with supplemental appropriations. As already noted, within days of the terrorist attacks of 9/11, Congress pledged a total of \$40 billion in support of the war.¹⁰³ In 2002, Congress provided another \$14.5 billion to the DOD to cover the costs of the GWOT as it had unfolded to that point.¹⁰⁴ Early in 2003, the DOD began reporting obligations for Operation Iraqi Freedom (OIF), and the remainder of Congressional appropriations for the GWOT will be discussed under the subsequent section dealing with that conflict.

As a trend, obligations for OEF have remained fairly constant since 2001, hovering between \$10-20 billion each fiscal year.¹⁰⁵ Total reported obligations for OEF are approximately \$93 billion.¹⁰⁶ The Congressional Research Service estimates that after the end-of-the-year supplemental passed by Congress in 2007, OEF will have received approximately \$140 billion.¹⁰⁷

¹⁰² Id.

¹⁰³ See Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, Pub. L. No. 107-38 (2001); Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, Pub. L. No. 107-117 (2001).

¹⁰⁴ See Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, Pub. L. No. 107-206 (2002).

¹⁰⁵ Sharon Pickup, *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, at 5.

¹⁰⁶ This covers operations in Afghanistan, the Horn of Africa, and the Philippines. Id. at 4.

¹⁰⁷ Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, February 22, 2008, at summary.

B. The War in Iraq

American entry into war with Iraq stands in stark contrast to the events that precipitated action against Afghanistan. Books have been written about the events leading up to the conflict in Iraq, but for our purposes, it suffices to say that even if the President did not come to office with plans to invade Iraq, the events of 9/11 gave several high-ranking members of his Cabinet a public argument for war.¹⁰⁸ Bob Woodward reports that on November 21, 2001, President Bush instructed Secretary of Defense Donald Rumsfeld to “get started” on an updated war plan for Iraq.¹⁰⁹ By summer of the next year, President Bush had stepped up bombing raids on Iraq and had approved significant construction projects in Kuwait in preparation for landing a substantial number of American troops there.¹¹⁰ Massive public works projects such as paving runways and constructing combat vehicle ramps also took place in Jordan and Oman during this time.¹¹¹ Rumsfeld insisted to General Tommy Franks, the man in charge of planning the invasion of Iraq, that the DOD had the funds for such projects available and to go forward with whatever projects were required.¹¹² By mid-June of 2002, two brigades were positioned in Kuwait with equipment for four brigades.¹¹³ It would take another three weeks or so to get two more brigades there.¹¹⁴ The total cost of this preparatory action was \$700 million.¹¹⁵

¹⁰⁸ See Louis Fisher, “Legislative-Executive Relations and U.S. Policy Toward Iraq” in *Presidential Policies and the Road to the Second Iraq War*, found in John Davis, ed., *Presidential Policies and the Road to the Second Iraq War* (2006), 67-78.

¹⁰⁹ Bob Woodward, *Plan of Attack* (2004), 1-2.

¹¹⁰ John C. Conyers, Jr., et al, *The Constitution in Crisis* (2007), 16.

¹¹¹ Woodward at 123, 136-37.

¹¹² *Id.*

¹¹³ *Id.* at 130, 135.

¹¹⁴ *Id.* at 135.

¹¹⁵ Michael R. Gordon and General Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (2006), 48.

Like the First Gulf War, at this point there was still no money specifically appropriated for this construction and deployment of troops and equipment to the Gulf Region. The President instead relied on reprogramming authority to foot the initial bill.¹¹⁶ It also seems that the DOD used emergency funds appropriated for OEF and Operation Noble Eagle (ONE) to cover the costs of this action. Indeed, Bob Woodward makes this claim in his chronicle of events leading to the Iraq War.¹¹⁷ Consideration of Congress' use of the Defense Emergency Response Fund (DERF) as a mechanism for funding the early stages of the GWOT tends strongly to support to this claim.

C. Defense Emergency Response Fund

In the wake of September 11, Congress wanted to make funds immediately available to the DOD to both respond to and recover from the terrorist attacks.¹¹⁸ To do this, it deposited \$15/\$17 billion dollars of emergency funding included in the first two supplemental appropriations to fund the war in the DERF.¹¹⁹ The Office of Management and Budget (OMB) and the DOD agreed that these funds could not be transferred to regular appropriations accounts; rather, they were to be managed according to 10 funding categories set forth by OMB.¹²⁰ OMB, in turn, used these 10 categories in reporting to Congress.¹²¹ These ten categories, however, did not align with the DOD's normal appropriations accounts, resulting in a dual system of accounting in which tracking funds

¹¹⁶ Woodward at 136-37.

¹¹⁷ Id. at 137.

¹¹⁸ Sharon Pickup, et al, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, GAO-03-346, April 2003, 5.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

was difficult.¹²² As a result Congress changed its method of providing these funds in subsequent appropriations in FY2002 by designating the DOD component, account, and purpose to which the funds applied.¹²³ Thus, the funds were initially placed in the DERF and then transferred to the specified DOD account.¹²⁴ In FY2003, as perhaps a showing of still greater caution, Congress placed the total amount of emergency designated funds, \$7.1 billion, directly into the appropriated DOD account.¹²⁵ Notwithstanding the more streamlined approach, the DOD cannot account for the \$20.5 billion of emergency response funds it received in FY2002 and FY2003,¹²⁶ as its accounting system only tracks total obligations and does not distinguish among sources of funding.¹²⁷ Therefore, once the DERF funds were transferred into a regular DOD account, they lost their GWOT designation¹²⁸ and could well have been used for any number of purposes. Likewise, because the GWOT is funded from multiple sources, the DOD cannot say how much of the emergency response funds were used in that effort. This accounting gap is not filled, even though the DOD has a separate system that tracks the spending related to the contingency operations of the GWOT.¹²⁹ In fact, for the same FY2002-2003 period in which the DOD is unable to account for how \$20.5 billion of emergency funds was spent,

¹²² Id. at 6.

¹²³ Id. at 6, 19.

¹²⁴ Id. at 23.

¹²⁵ Id. at 20. Also in 2003, Congress closed the DERF and opened the Iraqi Freedom Fund instead. See Emergency Wartime Supplemental Appropriations Act, Pub. L. No. 108-11 (2003).

¹²⁶ Sharon Pickup, et al, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, GAO-03-346, April 2003, at 4.

¹²⁷ Id.

¹²⁸ Id. at 23.

¹²⁹ Id.

the DOD reported \$20.1 billion of what it claimed to be war related spending that it had, nonetheless, failed to include in its monthly cost of war reports.¹³⁰

Furthermore, because of the incongruence between the OMB's and the DOD's funding categories for the DERF, a component officer, following the DOD guidance concerning the use of such funds, could have concluded in good faith that the costs of the preparatory work and mobilization of troops that occurred in the Gulf Region during the summer of 2002 fell appropriately under the OMB's funding categories.¹³¹ For instance, one of the categories listed by OMB was "Increase Worldwide Posture," under which heading the DOD included "Mobilization of Guard and Reserves" as an appropriate line item.¹³² Even though this is an incredibly broad category that includes a number of costs arising from "special pay, transportation, and equipment," the DOD provided no further guidance as to what could appropriately be funded.¹³³ By the end of the calendar year in 2002, the DOD reported that it had obligated approximately \$14/15 billion of emergency funding in the DERF.¹³⁴ The spending under the "Increased Worldwide Posture" category far outstripped the reported obligations under the other categories, and it is under this heading that the aforementioned pre-positioning of troops would most properly seem to fit.¹³⁵

¹³⁰ Cost of war reports track the cumulative incremental obligations incurred in waging the GWOT. The DOD has prepared these monthly reports since FY2001. See *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, 1.

¹³¹ *Id.* at 6, 9.

¹³² *Id.*

¹³³ *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, 6, 9. Although the OMB also established criteria governing requests for emergency funds, such as requiring that the funded item or action be "urgent," the DOD did not provide guidance to its components as to the specific meaning of such terms, leaving the officers to use their best judgment as to what constituted an appropriate expense. *Id.* at 9, 21-22

¹³⁴ Sharon Pickup, et al, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, GAO-03-346, April 2003, 8.

¹³⁵ *Id.*

In sum, it appears that the President used existing authority and emergency funds designated for the GWOT to pre-position troops near the Iraqi border well before Congress ever authorized an invasion.

D. Congressional Authorization for the War in Iraq

A majority in both chambers of Congress voted in 2001 to authorize the President to choose to go to war with Iraq.¹³⁶

The First Gulf War and the Iraq War both involved significant buildup of military force prior to Congressional authorization for war, but the meaningful similarities end there.¹³⁷ As with the number of troops involved in the second episode of pre-positioning, the international support for U.S. intervention was only a fraction of that which accompanied the first Gulf War. Professor Ely has suggested that the firm backing of the U.N. Security Council for President George H. W. Bush's plans to attack Iraq placed immense pressure on Congress to "authorize" the war.¹³⁸ In the showdown prior to the second Iraq war, the pressure was exerted in the other direction. Indeed, the resolution reported out of the House International Relations Committee was, in part, an attempt to convince the "Security Council and others in the international community to join [the U.S.] in bringing pressure on Iraq, or if required, in using armed force against it."¹³⁹

¹³⁶ Authorization for the Use of Military Force Against Iraq, Pub. L. No. 107-243 (2002).

¹³⁷ Buildup to the two wars may also be similar in that in each case Congressional authorization was given, as least in part, in hopes of convincing Saddam Hussein to meet U.N. and U.S. demands and thus avoid a conflict altogether. See John Hart Ely, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath*, 51; Fisher, n. 16 supra, at 82.

¹³⁸ Id.

¹³⁹ Fisher at 82.

The President and his congressional allies exerted public and private pressure to secure passage of an authorization for use of force.¹⁴⁰ In the 2002 mid-term elections, some linked opposition to the war with weakness on terrorism.¹⁴¹ Nor was it surprising when the administration pressured Congress to pass the resolution before the November elections.¹⁴² But all of this is to be expected and presents no special case of coercion.

Not surprisingly, Congress voted to authorize the war.¹⁴³ In the end the resolution was much as Senator Kerry described it, a trusting conferral of power and discretion to the President.¹⁴⁴ “We are affirming a president’s right and responsibility to keep the American people safe, and the president must take that grant of responsibility seriously,” Kerry said.¹⁴⁵ Of course, this affirmation of executive power is precisely what the President sought, and the mutually beneficial result of such political positioning was too much for Congress to resist as well.¹⁴⁶ This transfer of “responsibility” was also a transfer of much political risk.

E. Funding the Iraq War

The first appropriations for the Iraq War came in the form of supplemental, often emergency-designated, appropriations. Reprogramming, transfers and accelerated spending supplemented those appropriations. Congress’ first supplemental appropriation

¹⁴⁰ Fisher at 83-85.

¹⁴¹ *Id.* at 80.

¹⁴² *Id.* at 78.

¹⁴³ The House voted 296-133, see Fisher at 83. The Senate voted 75-25, see Washington Post Votes Database, available at <http://projects.washingtonpost.com/congress/107/senate/2/votes/233>

¹⁴⁴ Fisher at 82.

¹⁴⁵ *Id.*

¹⁴⁶ Indeed, some have suggested that the Democrat-controlled Senate suffered from a form of self-induced anxiety, causing it to vote in favor of the Iraq war so as to be done with it and allow the party to focus on the “core message highlighting economic distress before the November elections.” See Louis Fisher, “Legislative-Executive Relations and U.S. Policy Toward Iraq” in *Presidential Policies and the Road to the Second Iraq War*, found in John Davis, ed., *Presidential Policies and the Road to the Second Iraq War* (2006), 67-78.

to fund the war in Iraq came in April 2003.¹⁴⁷ In that act Congress appropriated \$62.4 billion to fund the GWOT as it was unfolding around the world, including operations in Iraq.¹⁴⁸ In November of the same year, Congress provided another \$87.5 billion for military operations.¹⁴⁹ Between these two appropriations, the DOD used its transfer authority, reprogramming, and accelerated spending¹⁵⁰ to make up for a \$26 billion shortfall in the supplemental funding—a shortfall occasioned by preparations for the war in Iraq.¹⁵¹

In August of 2004, Congress provided another \$25 billion in emergency funding to cover a FY2004 shortfall.¹⁵² Congress was obliged to provide this funding to keep the DOD afloat because the Bush administration decided not to request FY2005 supplemental funding until after the start of the 2005 calendar year.¹⁵³ Congress felt the need to do the same the next year, providing a \$50 billion bridge fund in FY2006,¹⁵⁴ and for FY2007, the Bush administration requested such a bridge fund.¹⁵⁵ Congress continued to use supplemental appropriations and emergency funds to support the war on terror, and by June of 2006, it had provided 91% of the \$331 billion appropriated for the GWOT through supplementals or emergency-designated funds.¹⁵⁶

¹⁴⁷ See Emergency Wartime Supplemental Appropriations Act, Pub. L. No. 108-11 (2003).

¹⁴⁸ Id.

¹⁴⁹ See Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, Pub. L. No. 108-104 (2003).

¹⁵⁰ Dov Zakheim, “Defense Department Special Briefing: Purpose of Budget Supplementals,” February 11, 2004, available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2062> (Hereinafter *DOD Special Briefing*).

¹⁵¹ Id.

¹⁵² See Department of Defense Appropriations Act, Pub. L. No. 108-287 (2004).

¹⁵³ Amy Belasco, et al, *How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations*, at 4, note 4.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or Supplemental Appropriations Bills*, June 13, 2006, 1.

In October 2006, Congress passed the John Warner National Defense Authorization Act.¹⁵⁷ This act required the President to include any request for war funding in his *annual* budget submission along with an estimate of the total cost of the operations for the entire year and detailed justification for the same.¹⁵⁸ Accordingly, in February 2007 the President included his request for war funding in his FY2008 budget proposal for the first time since September 2001.¹⁵⁹ The administration reported that it would seek to amend its request as circumstances required,¹⁶⁰ and it did so on two subsequent occasions—requesting an additional \$5.3 billion in July and another \$42.3 billion in October.¹⁶¹

While the costs for operations in Afghanistan have remained fairly constant, the costs of the war in Iraq have continued to escalate since 2003 with a recent spike in obligations due to the surge strategy announced in January 2007 and the increased costs of repairing and replacing battle-worn equipment.¹⁶² In every year since 2003, in which the total estimated budget authority was \$53 billion, costs of operations in Iraq have increased, topping \$133 billion in FY2007.¹⁶³ Congress has already authorized \$76.4 billion for FY2008.¹⁶⁴ Currently the Army and Marine Corp, which combine to obligate

¹⁵⁷ Pub. L. No. 109-364 (2006).

¹⁵⁸ Sharon Pickup, *DOD Needs to Take Action to Encourage Fiscal Discipline and Optimize the Use of Tools Intended to Improve GWOT Cost Reporting*, GAO-08-68, November 6, 2007, 10.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 1.

¹⁶² *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, at 5.

¹⁶³ Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, February 22, 2008, 8.

¹⁶⁴ *Id.*

the lion's share of appropriated war funds, plan to obligate respectively \$6.6 billion and \$800 million per month in operations dealing with the GWOT.¹⁶⁵

In total, Congress has appropriated nearly \$700 billion in support of the GWOT, and the DOD has obligated approximately \$527 billion.¹⁶⁶ Of the total appropriated, \$526 billion has been provided to support OIF, of which the DOD has already obligated \$406.2 billion.¹⁶⁷

F. Analysis of Iraq War and GWOT Budgeting Strategies

1. Problems with GWOT Funding Practice

There are many reasons that counsel against the recent practice of requesting and appropriating funds to support the GWOT by way of supplementals and emergency designations. These mechanisms reduce transparency, and thus Congressional oversight, and unduly complicate matters for the military.

The use of supplemental appropriations, even if the funds are not emergency-designated, works to reduce transparency and limit Congress' ability to make trade-offs in defense funding priorities.¹⁶⁸ In the years that the President sought supplemental funding to cover the cost of the GWOT, rather than including his request for war funds in his annual budget submission, he was not required to provide the extensive justifications

¹⁶⁵ Amy Belasco, et al, *How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations*, 2.

¹⁶⁶ Amy Belasco, et al, *How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations*, 8; *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, 4. CRS, DOD, and CBO estimates of total amount of enacted war funding differ due to disparate interpretations of which funding is war-related. See Amy Belasco, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, February 22, 2008, 6.

¹⁶⁷ *Id.*

¹⁶⁸ Susan J. Irving, et al, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314, January 2008, 16.

that usually accompany such requests when made through the annual budget process.¹⁶⁹

Due to this reduction in justification materials provided, Congress was less capable of exercising its oversight responsibilities.¹⁷⁰

The practice of designating funds as “emergency appropriations,” too, presents a problem of oversight and accountability. Since the attacks of 9/11, Congress has appropriated over \$350 billion in emergency-designated funds to the DOD, the vast majority of which was used to fund the GWOT.¹⁷¹ This type of funding is “exempt from certain points of order and other budget enforcement provisions.”¹⁷² For example, these funds are exempt from the discretionary spending ceilings established by Congress’ annual budget resolutions.¹⁷³ Also, as discussed previously, since the DOD has no means of tracking emergency funds as such and its guidance to component officers is not always clear as to what constitutes an emergency, once Congress appropriates such funds it loses much of its ability to monitor their use.¹⁷⁴ As a further complication, the DOD has recently approved the use of emergency-designated funds for the so-called “longer war on terror.”¹⁷⁵ This practice blurs the line between costs traditionally included in the baseline and those appropriately designated emergencies.¹⁷⁶ This renders Congress less

¹⁶⁹ Stephen Daggett, *Military Operations: Precedents for Funding Contingency Operations in Regular or in Supplemental Appropriations Bills*, June 13, 2006, 2.

¹⁷⁰ *Id.*

¹⁷¹ Susan J. Irving, et al, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314, January 2008, 36-39. Some of this funding was used to fund tsunami and hurricane relief in 2005 and 2006. *Id.*

¹⁷² *Id.* at 15.

¹⁷³ Amy Belasco, CRS Report for Congress, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, February 22, 2008, 11.

¹⁷⁴ Sharon Pickup, et al, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, GAO-03-346, April 2003, 4.

¹⁷⁵ *Id.* at 22.

¹⁷⁶ *Id.*

able to make the necessary trade-offs between funding the current war and the DOD's long-term funding requests.¹⁷⁷

The net costs incurred by the military when a war is funded this way are great indeed, leading several high-ranking officers to condemn the practice.¹⁷⁸ No one would contend that the costs of a war, especially one as dispersed and unconventional as the current GWOT can be predicted a year in advance to the same degree of accuracy that normal DOD component cost-estimates are. It is anticipated that obligations may end up outstripping appropriations in a given year, requiring a supplemental request for funding to permit the armed forces to continue operations. As the powers of the purse are held separately from the powers of war, the military will often be anxious about having to go back to the well. The practice of relying solely on supplemental requests for funding a war greatly exacerbates this inherent difficulty. In fact, in the two most recent years of the GWOT, the military has been obliged to draw up plans for massive internal spending cuts due to anticipation of delays in the provision of supplemental funding.¹⁷⁹

While continued funding was uncertain in December 2007, the Congressional Research Services explored and reported several ways by which the military could use currently available funds and authority to prolong operations for a month longer than the

¹⁷⁷ Id.

¹⁷⁸ Amy Belasco, et al, *How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations Bills*, December 12, 2007, 3-4; *DOD Special Briefing*.

¹⁷⁹ Belasco supra, 5. In April of 2007, the Army instituted a plan to increasingly cut costs by limiting activities. Most recently, while the end of the year supplemental was held up during Congressional debates about a potential timetable for withdrawal from Iraq, Secretary of Defense Gates announced a plan to "cease operations at all Army bases by mid-February" of 2008. In furloughing 200,000 civilian and contractor personnel, this plan would have reduced the services available at Army bases to the likes of police and fire protection, eliminating all but the most basic protections

DOD's own calculation's indicated.¹⁸⁰ Army Chief of Staff George Casey described such a scenario in the following terms:

In general, as Chief of Staff of the Army, not having predictable, timely funding makes it harder for me to do my job: to organize, train and equip the Army. Every time you put something off or delay it or take some measures to get another week's worth of funding for the operations and maintenance account, it has second and third order effects that ricochet all through the organization, that you don't find the results for two or three months, and it just makes it harder.

The second thing is I think what's going on right now sends a terrible signal to soldiers and families. We have nine brigades that are redeploying from Iraq and Afghanistan right now after being gone for 15 months. They started in September. They'll come in through January. The notion that people are even discussing closing down or warm-basing their installations just minimum essential tasks at a time when they're coming home from being gone for 15 months is very difficult for them.¹⁸¹

Reliance on such severe belt-tightening procedures hampers the military. Yet, such prospects are threatened every time the DOD uses even the more common budget maneuver of accelerated spending.¹⁸² This raises the question *why* the Bush

¹⁸⁰ Amy Belasco, et al, *How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations Bills*, December 12, 2007, 12.

¹⁸¹ *Id.* at 4.

¹⁸² *DOD Special Briefing*.

administration has insisted upon funding the war via sporadic supplementals — analyzed further below.

2. Analysis of the Bush Administration’s Practice of Relying on Supplemental and Emergency Appropriations.

There are several possible explanations for this practice. For one, the DOD insists that its reliance on accelerated spending and supplementals is necessary to give the administration the added benefit of hindsight, which in turn enables it to provide more accurate funding requests to Congress.¹⁸³ The DOD comptroller even claimed that Congress rebuffed the administration in its early efforts to include war funding for Afghanistan within the annual budget, requiring that it wait to request funding in a supplemental later on to ensure more accurate cost predictions.¹⁸⁴

As a second observation, the use of cash flowing and requests for supplemental appropriations provides the DOD with an added measure of budgetary control. By taking funds designated to cover the -long costs of DOD functions and using them to finance the immediate operation year of the administration’s choice, the DOD is able to determine which end-of-the-year baseline projects are expendable (or which ones Congress is most unlikely to refuse to fund) and ensure that its top priority operations receive the funding they need. While this practice may cause the Army concern,¹⁸⁵ the DOD rests assured that Congress will not permit any bases to shut down right as troops are coming home from war, just as it proved unwilling to withhold funding for protective armor for combat

¹⁸³ *DOD Special Briefing.*

¹⁸⁴ *DOD Special Briefing.*

¹⁸⁵ *Id.*

vehicles.¹⁸⁶ The DOD knows just how compelling a General's pleas can be in petitioning Congress on behalf of his battle-wearied troops.¹⁸⁷

Emergency-designated funds provide still greater budgeting advantages. They are exempt from certain points of order and the spending ceilings established in Congressional budget resolutions.¹⁸⁸ Providing funds in this way also avoids swelling the DOD baseline, a result both the Congress and the President gladly welcome.¹⁸⁹

3. Proposals for Improving GWOT Funding

While Congress has already required the President to include future requests for war funding in his annual budget submission, a great leap in the right direction, there are several more steps that can be taken to improve Congressional oversight. The DOD has already taken some of these steps, but there is still some distance to be covered. As an example of another step taken in the right direction, in response to a GAO recommendation, the DOD has modified its guidance to more clearly define cost categories in its reports on GWOT obligations.¹⁹⁰ Further recommendations GAO has made to the DOD include: providing guidance to components defining the "longer war on terror" and including these costs in the defense baseline; determining what other costs can be included in the baseline and placing them there; and considering limiting requests for emergency funding to true emergencies.¹⁹¹

¹⁸⁶ Sharon Pickup, *DOD Needs to Take Action to Encourage Fiscal Discipline and Optimize the Use of Tools Intended to Improve GWOT Cost Reports*, GAO-08-68, November 6, 2007, 1.

¹⁸⁷ *DOD Special Briefing*.

¹⁸⁸ Susan J. Irving, et al, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314, January 2008, 15.

¹⁸⁹ *Id.*

¹⁹⁰ *Global War on Terrorism: Reported Obligations for the Department of Defense*, GAO-08-557R, March 17, 2008, 2.

¹⁹¹ *Id.* at 3.

Other measures could be implemented to tighten the purse strings by restricting Executive spending discretion. Congress could be more specific in its appropriations bills and restrict transfer and reprogramming authority to certain designated activities. With only two exceptions, Congress has not specifically designated funds for wartime activities or for a specific theater of the GWOT.¹⁹² Because funds intended to support the war are intermingled with baseline funds, the President has great latitude in making wartime decisions,¹⁹³ at the cost of diminished oversight.¹⁹⁴ Congress could also narrow the President's breadth of discretion by restricting transfer authority, both in terms of the amount of money permitted to be transferred and the use to which it can be applied. In emergency appropriations made during the early stages of the GWOT, Congress provided for the transfer of significant amounts of DOD appropriations with only a requirement that the agency notify Congress of the transfer after the fact.¹⁹⁵ Given the failures of the DOD accounting system,¹⁹⁶ such a report may not have given Congress the information it needed to adequately oversee the transfer.

III. CONCLUSION

In this paper, we have chronicled the war budgeting strategies used in the Gulf War and in the Iraq War. Common to both accounts is the aggressive presidential use of the national security spending discretion to undertake massive troop deployments and war preparations prior to any specific congressional appropriation or authorization. In

¹⁹² Belasco, et al, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11*, February 22, 2008, 3.

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ See Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, Pub. L. No. 107-117 (2001); Emergency Wartime Supplemental Appropriations Act, Pub. L. No. 108-11 (2003).

¹⁹⁶ Sharon Pickup, et al, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, GAO-03-346, April 2003, 4.

the Gulf War, the Pentagon seized the opportunity to act while Congress was “out of town.” Preparations for war were complete by the time the President sought authorization to use force, and the war was over by the time its costs were appropriated. In the Iraq War, the current Bush Administration similarly took all possible steps up to the brink of war by using statutory spending discretion. Throughout the conduct of the Iraq War, the President’s use of supplementals has given a sense of *urgency* to his demand that Congress fund the timely necessities of troops in the field, and the practice has also allowed the DOD maximum control over its own budget — all at the expense of congressional oversight and long-term fiscal planning. It appears that the DOD has been willing to trade the certainty of annual appropriations for the advantage of *ad hoc* spending flexibility in the Iraq War.

Both conflicts clearly illustrate that defense appropriations in war time do not follow a neatly prescribed course of presidential request and justification, congressional deliberation and appropriations, and Defense Department spending. Instead, the Pentagon has effectively used the statutory discretion granted by Congress to displace Congress’ *ex ante* appropriations check. In the Gulf War, as in the Iraq War, congressional appropriations for costs have been in large part already expended or obligated, and were immediately necessary. This can hardly be construed as congressional support for the underlying war effort itself.

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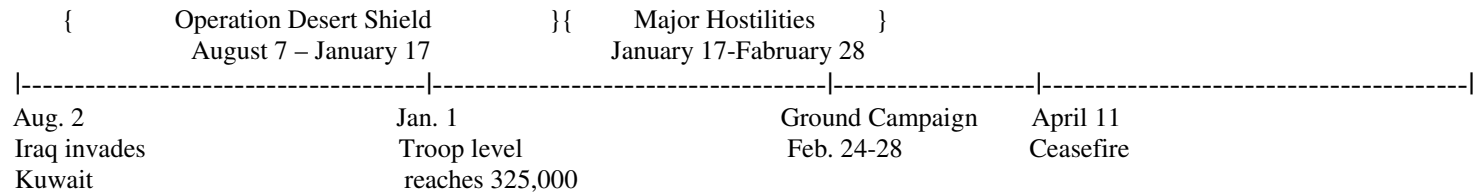
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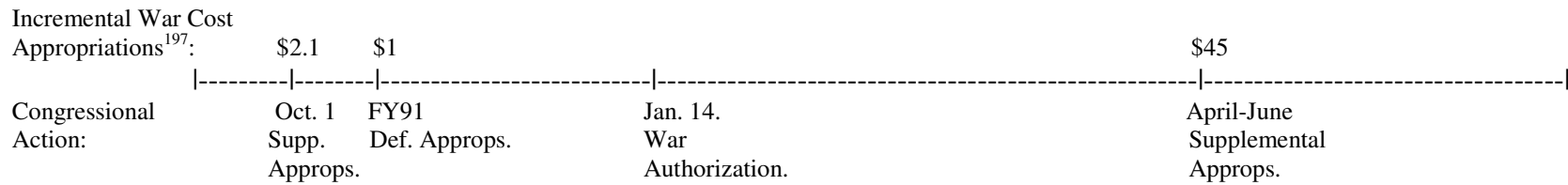
APPENDIX I

THE PERSIAN GULF WAR – A TIMELINE

MILITARY CAMPAIGN



CONGRESSIONAL PARTICIPATION



¹⁹⁷ All costs in billions.