

UNITED STATES FOREIGN RELATIONS LAW: Documents and Sources

**VOLUME III
THE WAR POWER**

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and
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A. Enactment of the War Powers Resolution

1. Introductory Note

The Senate, in 1969, passed the "National Commitments Resolution" which, while not making law, stated that a "use of the Armed Forces of the United States on foreign territory" should occur "only from affirmative action taken by the executive and legislative branches of the United States Government...." S.Res. 85, 91st Cong., 1st Sess. This was the first step by the legislative branch to recapture a share of the war-making power which, in practice, had largely devolved on successive Presidents.

In 1970 and 1971, the House of Representatives passed bills which would have obliged the President to report to Congress after despatching troops to fight abroad on his sole authority. The Senate, however, refused to consider these, proceeding, instead, with a bill which listed the situations in which the President could employ the Armed Forces on his own authority and prohibited use of the military in all other situations except on the authority of Congress.

These four categories of situations were: (1) when the President was repelling or anticipating an attack on the United States, its territories and possessions; (2) when responding to an attack on U.S. Armed Forces or forestalling an imminent threat against them; (3) when protecting U.S. citizens being evacuated from abroad; or (4) when exercising discretion under a statutory grant of authority. The Senate bill also limited the President, even when acting pursuant to one of these four categories of authority, to thirty days of war-making, after which hostilities could continue only if authorized by Congress.

Neither the House nor Senate bills received support from the other chamber in 1972. By 1973, however, the differences had narrowed. The Senate version, S. 2956, was essentially the same as the previous year's bill. In the House, H.J.Res. 542 (the "Morgan-Zablocki" bill) did not list when the President could act on his own authority but did provide that any use of the Armed Forces not sanctioned by Congress could at any time be terminated by a concurrent resolution of the two chambers. This procedural device, the "Congressional veto," grants the President power to act until Congress

withdraws that authority, which it does by passing a resolution that is not a "bill" and is not presented to the Chief Executive for signature, thus denying him the occasion to exercise his veto power under Article I, Section 7 of the Constitution. The effect is that Congress could stop the President with a simple majority in each House, rather than the two-thirds necessary to override a veto.

The House version also limited Presidential war-making to 120 days unless earlier authorized by Congress and required him to report to Congress within 48 hours of initiating a use of the Armed Forces.

In the summer of 1973, both chambers passed their respective versions and these were referred to Conference Committee to be reconciled. The result is H.J.Res. 542, which, on November 7, 1973, became PL 93-148 after both chambers had succeeded in overriding President Richard Nixon's veto by a margin of 284 to 135 and 75 to 18.

Since the House and Senate reconciled their differences by borrowing from both bills, the law can best be understood in the light of this process of cutting and splicing, the original House and Senate versions are included among these documents, as well as the Conference Report explaining the intent of the negotiators for the two chambers.

2. H.J.Res. 542 (93rd Cong., 1st Sess.), the House Version ("Morgan-Zablocki" Bill) of the War Powers Resolution. May 3, 1973

WAR POWERS RESOLUTION

HEARINGS
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
ON
A REVIEW OF THE OPERATION AND EFFECTIVENESS
OF THE WAR POWERS RESOLUTION

JULY 13, 14 AND 15, 1977



H. J. RES. 542

[Report No. 93-287]

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1973

Mr. ZABLOCKI (for himself, Mr. FOUNTAIN, Mr. FRASER, Mr. BINGHAM, Mr. FARCELL, Mr. DAVIS of Georgia, Mr. CHARLES WILSON of Texas, Mr. FINDLEY, Mr. DU PONT, Mr. BIESTER, Mr. NIX, Mr. BROOMFIELD, Mr. PEPPER, Mr. HAYS, and Mr. HOLIFIELD) introduced the following joint resolution; which was referred to the Committee on Foreign Affairs

JUNE 15, 1973

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

JOINT RESOLUTION

Concerning the war powers of Congress and the President.

*Resolved by the Senate and House of Representatives
of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This measure may be cited as the "War Powers Resolution of 1973".

CONSULTATION

SEC. 2. The President in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostilities or to situations where hostilities may be imminent,

and after every such commitment shall consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities may be imminent.

REPORTING

SEC. 3. In any case in which the President without a declaration of war by the Congress—

(1) commits United States Armed Forces to hostilities outside the territory of the United States, its possessions and territories;

(2) commits United States Armed Forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, replacement, repair, or training of United States Armed Forces; or

(3) substantially enlarges United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within ~~forty-eight~~ *seventy-two* hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions

under the authority of which he took such action;

(C) the estimated scope of activities;

(D) the estimated financial cost of such commitment or such enlargement of forces; and

(E) such other information as the President may deem useful to the Congress in the fulfillment of its con-

stitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

CONGRESSIONAL ACTION

SEC. 4. (a) Each report submitted pursuant to section 3 shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same day. If Congress is not in session when the report is transmitted, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable, shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Senate Foreign Relations Committee for appropriate action, and each such report shall be printed as a document for each House.

(b) Within one hundred and twenty calendar days after a report is submitted or is required to be submitted pursuant to section 3, the President shall terminate any commitment and remove any enlargement of United States Armed Forces with respect to which such report was submitted, unless the Congress enacts a declaration of war or a specific authorization for the use of United States Armed Forces.

(c) Notwithstanding subsection (b), at any time that the United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or other specific authorization of the Congress, such forces shall be disen-

gaged by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURE

SEC. 5. (a) Any resolution or bill introduced pursuant to section 4 (b) at least forty-five days before the expiration of the one hundred and twenty-day period specified in said section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Senate Foreign Relations Committee, and *one such resolution or bill* shall be reported out by such committee, together with its recommendations, not later than thirty days before the expiration of the one hundred and twenty-day period specified in said section.

(b) Any resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three legislative days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a resolution or bill passed by one House shall be referred to the appropriate committee of the other House and shall be reported out not later than fifteen days before the expiration of the one hundred and twenty-day period specified in said section. The resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three legislative days after it has been reported, unless such House shall otherwise determine by yeas and nays.

SEC. 6. (a) Any resolution introduced pursuant to section 4 (c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Senate Foreign