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THE WAR POWERS RESOLUTION

Relevant Documents, Correspondence, Reports

PREPARED BY THE
SUBCOMMITTEE ON INTERNATIONAL SECURITY
AND SCIENTIFIC AFFAIRS
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COMMITTEE ON FOREIGN AFFAIRS



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(II)

FOREWORD

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL SECURITY,
AND SCIENTIFIC AFFAIRS,
Washington, D.C.

On November 7, 1973, Congress enacted the War Powers Resolution, requiring the President to consult with and report to the Congress on any decision to introduce U.S. Armed Forces into hostilities or potential hostilities unless there has been a declaration of war or other explicit congressional authorization. This resolution reaffirms the constitutionally mandated authority of Congress to declare war.

As part of its oversight activities, the Subcommittee on International Security and Scientific Affairs in 1975 published a committee print of relevant documents, important pertinent correspondence, and reports submitted by the President in compliance with section 4(a)(2) of the War Powers Resolution. The first two reports, submitted on April 4 and 12, 1975, related to evacuations at the end of the Vietnam war.

An updated committee print reflecting two additional reports submitted by the President in compliance with the resolution, was made available by the Subcommittee on International Security and Scientific Affairs in January 1976. On April 30, 1975, President Ford reported the use of U.S. Armed Forces to aid in the evacuation of U.S. citizens and others from South Vietnam. Less than a month later, on May 15, 1975, President Ford reported that he had ordered U.S. military forces to rescue the crew of and retake the ship *Mayaguez* which had been seized by Cambodian patrol boats on May 12, 1975.

This committee print contains the April 26, 1980, report by President Carter as well as the legal opinion of the President's Counsel on the use of U.S. Armed Forces in the unsuccessful attempt of April 24 to rescue the American hostages in Iran. It also includes recent correspondence between Secretary of State Haig and myself regarding the dispatch earlier this year of U.S. military advisers to El Salvador.

It is hoped that this committee print will be helpful to the Congress and the American people in assuring continued effective implementation of the War Powers Resolution.

CLEMENT J. ZABLOCKI, *Chairman.*

(III)

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Public Law 93-148
93rd Congress, H. J. Res. 542
November 7, 1973

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,

War Powers
Resolution.

SHORT TITLE

SECTION 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

SEC. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. USC prec. title 1.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

SEC. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; 87 STAT. 555

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or 87 STAT. 556

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

the President shall submit within 48 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 the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

SEC. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that 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 specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL.

SEC. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

SEC. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within

three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

59 Stat. 1031.

"Introduction of United States Armed Forces."

SEPARABILITY CLAUSE

SEC. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment.

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 7, 1973.

The House of Representatives having proceeded to reconsider the resolution (H. J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said resolution pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

W. PAT JENNINGS

Clerk.

I certify that this Joint Resolution originated in the House of Representatives.

W. PAT JENNINGS

Clerk.

IN THE SENATE OF THE UNITED STATES

November 7, 1973.

The Senate having proceeded to reconsider the joint resolution (H. J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections to the House of Representatives, in which it originated, it was

Resolved, That the said joint resolution pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

FRANCIS R. VALEO
Secretary.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-287 (Comm. on Foreign Affairs) and No. 93-547 (Comm. of Conference).
SENATE REPORT No. 93-220 accompanying S. 440 (Comm. on Foreign Relations).
CONGRESSIONAL RECORD, Vol. 119 (1973):
June 25, July 18, considered and passed House.
July 18 - 20, considered and passed Senate, amended, in lieu of S. 440.
Oct. 10, Senate agreed to conference report.
Oct. 12, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 9, No. 43:
Oct. 24, vetoed; Presidential message.
CONGRESSIONAL RECORD, Vol. 119 (1973):
Nov. 7, House and Senate overrode veto.

WAR POWERS

OCTOBER 4, 1973.—Ordered to be printed

Mr. ZABLOCKI, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.J. Res. 542]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. *This joint resolution may be cited as the "War Powers Resolution".*

PURPOSE AND POLICY

SEC. 2. (a) *It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.*

(b) *Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.*

(c) *The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a decla-*

ration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

SEC. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

- (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
- (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or
- (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation.

the President shall submit within 48 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 the introduction of United States Armed Forces;
- (B) the constitutional and legislative authority under which such introduction took place; and
- (C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

SEC. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on

Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that 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 specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

SEC. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar

days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

SEC. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations where involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

SEC. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment.

And the Senate agree to the same.

CLEMENT J. ZABLOCKI,
THOMAS E. MORGAN,
WAYNE L. HAYS,
DONALD FRASER,
DANTE B. FASCELL,
PAUL FINDLEY,
WM. BROOMFIELD,

Managers on the Part of the House.

J. W. FULBRIGHT,
MIKE MANSFIELD,
STUART SYMINGTON,
EDMUND S. MUSKIE,
G. AIKEN,
CLIFFORD P. CASE,
J. K. JAVITS,

Managers on the Part of the Senate

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the joint resolution struck out all after the resolving clause and inserted a new text. Under the conference agreement the House recedes with an amendment which substitutes a new text explained below except for clerical corrections, incidental changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

Section 1 of the Senate amendment substituted "War Powers Act" as a short title in lieu of the short title "War Powers Resolution of 1973" in the House joint resolution. Section 1 of the conference substitute provides a short title of "War Powers Resolution".

PURPOSE AND POLICY

The Senate amendment contained a section entitled "Purpose and Policy" (section 2) and a section entitled "Emergency Use of the Armed Forces" (section 3) which defined the emergency powers of the President to introduce United States Armed Forces into hostilities or situations of imminent hostilities.

The House joint resolution did not contain similar provisions.

The conference report contains a section entitled "Purpose and Policy". The new section states that:

(a) the purpose of the joint resolution is to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations;

(b) Article I, section 8 of the Constitution provides the basis for congressional action in this area; and

(c) the constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a

declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Section 2(c) is a statement of the authority of the Commander-in-Chief respecting the introduction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances. Subsequent sections of the joint resolution are not dependent upon the language of this subsection, as was the case with a similar provision of the Senate bill (section 3).

CONSULTATION

The House joint resolution provided for presidential consultation with the leadership and appropriate committees of Congress before and after the President introduces United States Armed Forces into hostilities or situations of imminent hostilities. The conferees modified the House provision, to provide for consultation with the Congress. Section 3 of the conference report is not a limitation upon or substitute for other provisions contained in the report. It is intended that consultation take place during hostilities even when advance consultation is not possible.

REPORTING

Section 4 of the conference report concerns reporting both the House joint resolution and the Senate amendment contained similar reporting provisions requiring the President to report to the Congress on specified actions. In the case of the House joint resolution, the reporting provisions triggered the subsequent congressional action provisions. In the Senate version, congressional action provisions were not triggered by the reporting provision, but were otherwise brought into play. Section 4 of the conference report draws on both the Senate and House versions. It requires that the President provide such other information as the Congress may request following his initial report on the introduction of United States Armed Forces, and further requires supplementary reports at least every six months so long as those forces are engaged. The initial presidential report is required to be submitted within 48 hours. The objective is to ensure that the Congress by right and as a matter of law will be provided with all the information it requires to carry out its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

CONGRESSIONAL ACTION

Both the House joint resolution and the Senate amendment provided for termination within a specified time of presidential use of United States Armed Forces without a declaration of war or specific prior statutory authorization. The termination period in the House joint resolution was 120 days; in the Senate amendment, 30 days.

The conferees agreed on a 60 day period following the forty-eight hour period in which the President is required to report under section 4. The 60-day period can be extended for up to 30 additional days if the President determines and certifies in writing to the Congress that unavoidable military necessity respecting the safety of the troops requires their continued use in bringing about a prompt disengagement from hostilities.

In section 5(a) the conferees accepted the provisions of the House joint resolution relating to the transmittal of the presidential report to Congress, with amendments which (1) provide for the possibility of reconvening of Congress in case of adjournment in order to consider such report, and (2) provide that 30 percent of the membership of the respective Houses may petition for such reconvening.

The House joint resolution provided that use of United States Armed Forces by the President without a declaration of war or specific statutory authorization could be terminated by Congress through the use of a concurrent resolution. The Senate amendment provided for such termination by a bill or joint resolution. The conference report contains the concurrent resolution provision.

The House joint resolution provided for termination of certain peacetime deployments of United States Armed Forces through the elapsing of a time period in which Congress failed to approve such deployments. The Senate amendment did not include such deployments in its congressional action provisions. The conference report requires presidential reporting on such deployments but section 5(b) does not require their termination.

CONGRESSIONAL PRIORITY PROCEDURES

Both the House joint resolution and the Senate amendment contained congressional priority procedures. They differed primarily in that the House language specifically stipulated resort to a procedure of committee consideration while in the Senate version any pertinent bill or joint resolution was to be considered as reported directly to the floor of the House in question unless otherwise decided by the yeas and nays. The language agreed to by the conference in sections 6 and 7 corresponds to the House version including separately stipulated priority procedures for consideration of concurrent resolutions requiring removal of forces. The following changes, however, were made:

- (1) language was added at the end of sections 6(a) and 7(a) allowing each House to change the procedures by the yeas and nays;
- (2) the various time frames in section 6 for full cycle consideration of a joint resolution or bill were shortened to conform to the change in section 5(b) from 120 days to 60 days;
- (3) following the reporting of a joint resolution or bill or concurrent resolution by the appropriate committee it was stipulated that the time for debate in the Senate shall be equally divided between the proponents and the opponents; and
- (4) section 6(d) and section 7(d) provide for expedited conference committee procedures in the consideration of pertinent legislation passed by both houses.

TERMINATION OF CONGRESS

Section 7 of the House joint resolution provided a mechanism to insure that the time period provided for under section 4 of the joint resolution would not expire while Congress was in adjournment. The Senate amendment had no similar provision. The conference report does not contain the House provision on the grounds that the language

of section 5 of the conference report had obviated the need of this section.

INTERPRETATION OF JOINT RESOLUTION

The Senate amendment contained definitions of certain terms. The House joint resolution, while incorporating some broad interpretations of the meaning of the joint resolution, did not contain such definitive language. The conferees agreed to combine both definitions and interpretations in a single section 8 with changes including:

(1) adoption of modified Senate language defining specific statutory authorization, and defining the phrase "introduction of United States Armed Forces" as used in the joint resolution;

(2) elimination of House language concerning the constitutional process requirement contained in mutual security treaties; and

(3) addition of Senate language which makes clear that the resolution does not prevent members of the United States Armed Forces from participating in certain joint military exercises with allied or friendly organizations or countries. The "high-level military commands" referred to in this section are understood to be those of NATO, the North American Air Defense command (NORAD) and the United Nations command in Korea (UNC).

SEPARABILITY CLAUSE

The Senate amendment contained a separability clause stipulating that, if any of its provisions or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance would not be affected. The House version did not contain a corresponding provision. The conferees accepted the language of the Senate amendment, with certain technical modifications.

EFFECTIVE DATE

Both the House joint resolution and the Senate amendment contained language providing that the legislation would take effect on the date of its enactment. This provision was not in disagreement.

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DANTE B. FASCELL,
PAUL FINDLEY,
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Managers on the Part of the House.

J. W. FULBRIGHT,
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EDMUND S. MUSKIE,
G. AIKEN,
CLIFFORD P. CASE,
J. K. JAVITS,

Managers on the Part of the Senate.

WAR POWERS RESOLUTION OF 1973

JUNE 15, 1963.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ZABLOCKI, from the Committee on Foreign Affairs,
submitted the following

REPORT

TOGETHER WITH MINORITY AND SUPPLEMENTAL VIEWS

[To accompany H.J. Res. 542]

The Committee on Foreign Affairs, to whom was referred the joint resolution (House Joint Resolution 542) concerning the war powers of Congress and the President, having considered the same, report favorably thereon with amendments and recommend that the joint resolution as amended do pass.

The amendments are as follows:

On page 2, line 19, strike out "forty-eight" and insert in lieu thereof "seventy-two".

On page 4, line 18, insert "one such resolution or bill" immediately after "and".

On page 5, line 13, insert "one such resolution" immediately after "and".

On page 6, immediately after line 2, insert the following:

TERMINATION OF CONGRESS

SEC. 7. For purposes of subsection (b) of section 4, in the event of the termination of a Congress before the expiration of the one hundred and twenty-day period specified in such subsection (b), without action having been taken by the Congress under such subsection, such one hundred and twenty-day period shall not expire sooner than forty-eight days after the convening of the next succeeding Congress, provided that a resolution or bill is introduced, pursuant to such subsection (b), within three days of the convening of such next succeeding Congress.

On page 6, line 4, strike out "7" and insert in lieu thereof "8".
On page 6, line 16, strike out "hereof" and insert in lieu thereof "of this Act".

On page 6, immediately after line 16, insert the following:

APPLICABILITY TO CERTAIN EXISTING COMMITMENTS

SEC. 9. All commitments of United States Armed Forces to hostilities existing on the date of the enactment of this Act shall be subject to the provisions hereof, and the President shall file the report required by section 3 within seventy-two hours after the enactment of this Act.

On page 6, line 18, strike out "8" and insert in lieu thereof "10".
On page 6, lines 4 and 18, strike out "resolution" and insert in lieu thereof "Act".

BACKGROUND

On three occasions in the past two sessions of Congress, the House of Representatives has passed war powers legislation. In the 91st Congress a joint resolution reported by unanimous vote from the Committee on Foreign Affairs was adopted under suspension of the rules in the House by a vote of 288 to 39. The House-passed measure was sent to the Senate where, because of that body's failure to act, it died with the end of the 91st Congress.

In the 92d Congress, the Committee on Foreign Affairs, again unanimously, reported House Joint Resolution 1 to the House. It was passed unanimously in the House by a voice vote under a suspension of the rules. The Senate, however, passed its own version of a war powers measure, and because of a parliamentary snarl which developed, it became necessary for the House to act once again. The Senate bill was amended with the language of House Joint Resolution 1 in the House—by a vote of 344 to 13—and sent to conference. The conferees met once near the end of the 92d Congress but could come to no agreement and the war powers resolution died once again.

ACTION IN THE 93D CONGRESS

Upon the opening of the 93d Congress the chairman of the Subcommittee on National Security Policy and Scientific Developments, and 11 cosponsors, introduced a new war powers resolution (House Joint Resolution 2), somewhat modified from those of prior years.

Six days of hearings were held by the subcommittee on that resolution and other war powers measures which had been referred to the Committee on Foreign Affairs. Among those proposals were:

Concerning the war powers of the Congress and the President.

H.J. Res. 96—Pepper
H.R. 2053—Matsunaga
H.R. 4378—Gude
H.J. Res. 498—du Pont

Governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

H.R. 317—Bingham
H.R. 4038—Nix
H.R. 5669—Bingham
H.R. 6424—Bingham et al.

Relating to the power of Congress to declare war.

H.J. Res. 315—Leggett
Relating to the war power of the Congress.
H.J. Res. 21—Danielson
H.J. Res. 71—Chappell et al.
H.J. Res. 72—Chappell et al.
H.J. Res. 89—Matsunaga
H.J. Res. 250—Dickinson
H.J. Res. 271—Fuqua
H.J. Res. 409—Chappell et al.
H.J. Res. 448—Cronin

Relative to the commitment of U.S. Armed Forces.

H. Res. 112—Rarick

To define the authority of the President of the United States to intervene abroad or to make war without the express consent of Congress.

H.R. 3722—Sisk

H.R. 4534—Nix

To make rules respecting military hostilities in the absence of a declaration of war.

H.R. 926—Quie

H.R. 2316—Railsback

H.R. 2740—Tiernan

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.

H.R. 454—Dellenback

H.R. 1454—Ullman

H.R. 3139—Harrington

H.R. 3333—Charles H. Wilson of Calif.

H.R. 3408—Fish

H.R. 3832—Mazzoli

H.R. 4725—Sandman

H.R. 4858—Ruppe

H.R. 4966—Meeds

H.R. 5455—Zwach

H.R. 5594—Esch

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress of the United States or of a military attack upon the United States.

H.R. 3046—Dennis et al.

H.R. 4295—Rousselot

H.R. 6318—Dennis et al.

Testifying were seven Members of the House, two Senators, a spokesman for the Department of State, and five private experts. Four markup sessions followed at which new language was drafted. A revised war powers resolution was ordered reported to the full committee by a vote of 9 to 1 on May 2. The following day the measure, House Joint Resolution 542, was introduced by the subcommittee chairman with 14 cosponsors, including Mr. Fountain, Mr. Fraser, Mr. Bingham, Mr. Fascell, 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. The committee considered the bill in markup on May 22, May 31, and June 7. The resolution was reported with amendments on the latter date by a vote of 31 to 4, with one member answering "present."

CONSTITUTIONAL CONTEXT

The Cambodian incursion of May 1970 provided the initial impetus for a number of bills and resolutions on the war powers. Many Members of Congress, including those who supported the action, were disturbed by the lack of prior consultation with Congress and

the near crisis in relations between the executive and legislative branches which the incident occasioned.

The issue concerns the "twilight zone" of concurrent authority which the Founding Fathers gave the Congress and the President over the war powers of the National Government.

The term "war powers" may be taken to mean the authority inherent in national sovereignties to declare, conduct, and conclude armed hostilities with other states. In the U.S. Constitution the war powers which are expressly reserved to the Congress are found in article 1, section 8, of the Constitution:

1. The Congress shall have power * * *

* * * * *

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years;

13. To provide and maintain a Navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

16. To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States;

* * * * *

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the Government of the United States, or in any department or officer thereof.

The war powers of the President are expressed in article II, section 2:

The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States * * *.

The interpretation and application of these constitutional grants have varied widely through our Nation's history. Testimony received during hearings held in the 91st, 92d, and 93d Congresses confirmed the view of many Members of Congress and outside observers that the constitutional "balance" of authority over war-making has swung heavily to the President in modern times. To restore the balance provided for and mandated in the Constitution, Congress must now reassert its own prerogatives and responsibilities.

In shaping legislation to that purpose, the intention was not to reflect criticism on activities of Presidents, past or present, or to take punitive action. Rather, the focus of concern was the appropriate scope and substance of congressional and Presidential authority in the exercise of the power of war in order that the Congress might fulfill its responsibilities under the Constitution while permitting the President to exercise his responsibilities.

The objective, throughout the consideration of war powers legislation, was to outline arrangements which would allow the President and Congress to work together in mutual respect and maximum harmony toward their ultimate, shared goal of maintaining the peace and security of the Nation.

THE INTENT AND EFFECT OF HOUSE JOINT RESOLUTION 542

The issue of the war powers is a complex and challenging one. The committee's objective was to reaffirm the constitutionally given authority of Congress to declare war. At the same time, the committee was sensitive to and cognizant of the President's right to defend the Nation against attack, without prior congressional authorization, in extreme circumstances such as a nuclear missile attack or direct invasion. On the basis of the deepened understanding generated over recent years, however, it became increasingly evident that the problem did not center on such extraordinary circumstances. Rather, the main difficulty involved the commitment of U.S. military forces exclusively by the President (purportedly under his authority as Commander in Chief) without congressional approval or adequate consultation with the Congress.

As a result of extensive hearings and the contributions made by many members of the House who have given thought to, and sponsored legislation on, war powers, it was possible to arrive at a consensus as to what legislation in this important area should encompass. House Joint Resolution 542 embodies that consensus. Briefly, the legislation does the following:

1. Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of United States Armed Forces to hostilities or situations where hostilities may be imminent;

2. Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, or places or substantially increases U.S. combat forces on foreign territory;

3. Provides for a specific procedure of consideration by Congress when a Presidential report is submitted;

4. Denies to the President the authority to commit U.S. Armed Forces for more than 120 days without specific congressional approval, while also allowing the Congress to order the President to disengage from combat operations at any time before the 120-day period ends through passage of a concurrent resolution.

5. Stipulates a specific congressional priority procedure for consideration of any relevant bill or resolution which may be introduced—in other words, an antifilibuster provision; and

6. Specifies that the measure is in no way intended to alter the constitutional authority of the Congress or the President, or the provisions of existing treaties.

COST ESTIMATE

Pursuant to clause 7, Rule XIII, of the House Rules, the committee believes that the adoption and implementation of this war powers resolution will result in little or no additional cost to the Government of the United States. If adopted, however, application of the legislation could result in substantial future savings to the Nation, both in blood and treasure, by preventing U.S. military combat involvements abroad which are found by Congress to be not in the national interest.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and introductory clause

The introductory clause simply reads: "Concerning the war powers of Congress and the President." Sec. 1, the "Short Title," reads: "This measure may be cited as the 'War Powers Resolution of 1973'."

The word "concerning" was chosen because the resolution is merely intended to elaborate upon the application of the warmaking powers of the Congress and the President mentioned in the Constitution. By contrast with other war powers proposals, House Joint Resolution 542 does not attempt any itemized definition of the war powers.

Section 2. Consultation

This section directs that 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. * * **"

The use of the word "every" reflects the committee's belief that such consultation *prior* to the commitment of armed forces should be inclusive. In other words, it should apply in extraordinary and emergency circumstances—even when it is not possible to get formal congressional approval in the form of a declaration of war or other specific authorization.

At the same time, through use of the word "possible" it recognizes that a situation may be so dire, e.g. hostile missile attack underway, and require such instantaneous action that no prior consultation will be possible. It is therefore simultaneously *firm* in its expression of Congressional authority yet *flexible* in recognizing the possible need for swift action by the President which would not allow him time to consult first with Congress.

The second element of section 2 relates to situations *after* a commitment of forces has been made (with or without prior consultation). In that instance, it imposes upon the President, through use of the word "shall", the obligation to "*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.*"

A considerable amount of attention was given to the definition of *consultation*. Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice

and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

In the context of this and following sections of the resolution, a *commitment* of armed forces commences when the President makes the final decision to act and issues orders putting that decision into effect.

The word *hostilities* was substituted for the phrase *armed conflict* during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which fighting actually has begun, *hostilities* also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. "*Imminent hostilities*" denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict.

Section 3. Reporting

This section contains a reporting requirement obligating the President to submit a written report to Congress when "*without a prior declaration of war by Congress*", he takes certain actions committing U.S. Armed Forces. The section stipulates the circumstances requiring such a report, prescribes its form, specifies the nature of its contents, and states the timing of its submission. A central purpose of the reporting requirement is to cause the President, in the process of decisionmaking, to take into account the legal and constitutional foundation for his actions, as well as the constitutional role of the Congress in warmaking.

Three sets of circumstances which would require a report are enumerated in the resolution as follows:

(1) When the President "*commits United States Armed Forces to hostilities outside the territory of the United States, its possessions and territories.*" This includes all commitments of U.S. Armed Forces abroad to situations in which hostilities already have begun and where there is reasonable expectation that American military personnel will be subject to hostile fire.

The language makes clear that the subsection applies to hostilities *outside* the territory of the United States, as opposed to attacks directly upon, or *within*, the territory of the United States. This language implicitly recognizes the President's right to protect the United States against attacks by all enemies, foreign and domestic. There is no implication whatsoever that the resolution is intended to impair the President's authority to provide such defense.

(2) Reporting is required when the President "*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*". While subsection (1) refers to the commitment of U.S. troops to an area where armed conflict actually is in progress, subsection (2) covers the initial commitment of troops in situations in which there is no actual fighting but some

risk, however small, of the forces being involved in hostilities. A report would be required any time combat military forces were sent to another nation to alter or preserve the existing political status quo or to make the U.S. presence felt. Thus, for example, the dispatch of Marines to Thailand in 1962 and the quarantine of Cuba in the same year would have required Presidential reports. Reports would not be required for routine port supply calls, emergency aid measures, normal training exercises, and other noncombat military activities.

(3) Reporting is required when the President "*substantially enlarges United States Armed Forces equipped for combat already located in a foreign nation.*" While the word "substantially" designates a flexible criterion, it is possible to arrive at a common-sense understanding of the numbers involved. A 100-percent increase in numbers of Marine guards at an embassy—say from 5 to 10—clearly would not be an occasion for a report. A thousand additional men sent to Europe under present circumstances does not significantly enlarge the total U.S. troop strength of about 300,000 already there. However, the dispatch of 1,000 men to Guantanamo Bay, Cuba, which now has a complement of 4,000 would mean an increase of 25 percent, which is substantial. Under this circumstance, President Kennedy would have been required to report to Congress in 1962 when he raised the number of U.S. military advisers in Vietnam from 700 to 16,000.

The latter half of section 3 deals with the timing, form, and scope of the report submitted by the President.

(1) *Timing.*—Although prior war powers legislation had used the word "promptly" in designating the time period in which a Presidential report had to be submitted following an action specified under the resolution, the committee saw the need for more precision and adopted 72 hours as the time limit. This period is assumed to be sufficient for the President to assemble all the pertinent information necessary to make a full report to the Congress.

(2) *Form.*—The report by the President is stipulated to be in writing. Moreover, to the maximum extent possible, it is to be unclassified. If the President desires to make classified information available to the Congress as additional justification for his actions, he is free to do so. The procedure of submitting the report to the Speaker of the House and the President pro tempore of the Senate is a normal one for receiving such reports on behalf of Congress.

(3) *Scope.*—Five stipulations are made on the contents of the report. By prescriptive language in the resolution, the President is to include:

- (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 constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.*

It is the belief of the committee that a report which fulfills the criteria set forth above will provide the Congress with adequate information on which to base its deliberations and possible action concerning the commitment of U.S. Armed Forces by the President.

Section 4. Congressional action

Section 4 has four basic purposes: first, to provide for a specific procedure of consideration by Congress when a report is submitted pursuant to section 3; second, to provide for the receiving of a report when Congress is not in session; third, to deny the President the authority to commit U.S. Armed Forces for more than 120 days without further specific congressional approval; fourth, to authorize both Houses of Congress to order the President to disengage any forces from hostilities outside the United States at any time during or after the 120-day period through passage of a concurrent resolution.

Subsection (a) of section 4 provides that each report submitted by the President pursuant to section 3 shall be transmitted to the Speaker of the House and President pro tempore of the Senate on the same day.

It further provides that if such a report is received when Congress is not in session the Speaker and President pro tempore, *if they deem it advisable, shall jointly* request the President to convene Congress to *provide for consideration* of it and allow the Congress to take *appropriate action* pursuant to this section. There are *three reasons* for this language:

By use of the phrase "** * * if they deem it advisable * * **" it is intended that the good judgment of these two officials would determine whether the report covered a situation of sufficient urgency, importance and severity to warrant the extraordinary measure of ordering the reconvening of Congress. There may be instances when a report is filed on a relatively minor action.

The language "** * * shall jointly request*" makes clear that both the Speaker and President pro tempore would have to concur in the importance of and urgency of the situation covered in the report and in the desirability of asking the President to reconvene Congress. Yet, through use of the word "*shall*" the committee intended to convey its strong belief that reports dealing with situations of urgency and importance would obligate these two officials to request the President to reconvene Congress. In this connection the committee recognizes that the Constitution states clearly that only the President "may" reconvene Congress.

The language "** * * that it may consider the report and take appropriate action * * **" refers to the congressional action and procedures outlined in section 4 (b) and (c) as well as sections 5 and 6, "Congressional Priority Procedure."

The resolution further stipulates that following receipt of the report the Speaker and President pro tempore shall refer "*it to the Committee on Foreign Affairs of the House of Representatives and to the Senate Foreign Relations Committee. * * **" The purpose of this language was to make clear that these two committees have proper jurisdiction over declarations of war and with foreign affairs generally. Further, in order to make the report available to all members of Congress the resolution stipulates that it "*be printed as a document for each House.*"

Subsection (b) of the resolution is one of its major provisions. In brief, it stipulates that "*within one hundred and twenty calendar days after a report is submitted or is required to be submitted * * **" the President would be required to terminate the commitment referred to in the report and "*remove any enlargement of U.S. Armed Forces*" unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces. Considerations which entered into this provision are as follows:

The language "** * * * within one hundred and twenty calendar days * * **" was used as a means of providing an adequate but fixed limitation on the period of the Presidential action. The Congress recognizes that the President has, from time to time, assumed a power to act from provision of treaties, laws, and resolutions as well as from the Constitution itself which do not constitute an explicit or specific authorization. This provision enables Congress to consider the necessity or wisdom of a President's action and to require the President to abandon such action if Congress is not persuaded that the action is in the interest of the United States, or to endorse the action if Congress believes it to be in the national interest. As is made clear in section 8 of the resolution, this provision is not to be construed as a grant of authority to the President to act for 120 days. Rather, it should be considered a specific time limitation upon any power to act assumed by the President from sources other than a specific authorization by Congress.

Nor should this limitation and the power contained in subsection (c) be interpreted as limiting the means now available to Congress and citizens to challenge the authority of the President to act.

The language "** * * or is required to be submitted * * **" takes into account a situation in which the President for whatever reason may decide not to submit a report. In that case, the 120-day period would begin after the 72-hour period referred to in section 3.

The language "** * * the President shall terminate any commitment * * **" obligates the President explicitly to stop the commitment or enlargement and remove U.S. Armed Forces to which the report refers.

The phrase "** * * unless the Congress enacts a declaration of war or a specific authorization for the use of United States Armed Forces*" spells out either of the two specific affirmative actions which the Congress would have to take in order for the President to continue his action, namely, a declaration of war or a specific authorization in the form of a joint resolution.

Subsection (c) is another of the resolution's major provisions. It provides for the termination of the President's action covered in the report through passage of a concurrent resolution by both Houses, before the end of the 120-day period referred to in section 4(b) and notwithstanding section 4(b). It is, in other words, an option of congressional action. Considerations which entered into the legislative language here are as follows:

The phrase "*shall be disengaged*" has as its antecedent the President's action of committing U.S. Armed Forces. The intent

of the committee was simply that the President shall stop the action to which he has committed the forces by releasing the forces from the order which committed them, and removing them from the situation.

The language "** * * if the Congress so directs by concurrent resolution*" is the heart of subsection (c). It authorizes the use of a concurrent resolution to "veto" or disapprove an action of the President committing United States Armed Forces to hostilities. In effect, the joint resolution "endows" this concurrent resolution with the binding force of statute. Since the language applies to a situation where there is no congressional authorization for the President's action it thereby avoids the possibility of a Presidential veto—and resulting impasse—which would be possible on a bill or a joint resolution. A discussion of the use of a concurrent resolution for this purpose may be found on pages 13-14.

Sections 5 and 6. Congressional priority procedure

Sections 5 and 6 stipulate a specific congressional priority procedure for consideration of a relevant bill or joint resolution which may be introduced pursuant to section 4(b) or a concurrent resolution introduced pursuant to section 4(c). Sections 5 and 6 are, in other words, the "antifilibuster" provisions of the resolution. While it was recognized that filibusters are primarily a problem of the Senate, it was felt that these provisions would protect the interests of the House. It would achieve that objective, for example, by allowing the House enough time to deal with any relevant bill or resolution sent by the Senate. Section 5 relates to section 4(b) and section 6 relates to section 4(c). In both cases, the language provides for referral to relevant bills or resolutions to the House Committee on Foreign Affairs and the Senate Foreign Relations Committee in accord with the traditional jurisdiction of those committees.

The intent of the committee in including sections 5 and 6 is to establish the status of relevant legislation as "privileged motions," approximate to the procedure followed when a discharge petition is filed for the consideration of a resolution.

TIMING OF SECTION 5

As prescribed in section 5 which relates to section 4(b), the timing of congressional procedures would be as follows:

Forty-five days before end of 120-day period.—Bill or joint resolution must be introduced to be guaranteed protection of committee consideration.

Thirty days before end of 120-day period.—One such resolution or bill must be reported out by committee.

Within 3 legislative days of being reported by committee.—Legislation becomes pending business of either House and shall be voted on and sent to the other body.

Fifteen days before end of 120-day period.—Legislation acted upon by one body and sent to the other body and referred to appropriate committee shall be reported out.

Within 3 legislative days of being reported by committee in other body.—Legislation so reported shall become pending busi-

ness and shall be voted on unless such body shall otherwise determine by yeas and nays.

End of 120-day period.—Presidential action must stop unless previously sanctioned by Congress.

TIMING OF SECTION 6

The timing for congressional consideration under section 6, which relates to section 4(c) is as follows:

Within 15 calendar days of introduction of concurrent resolution.—One such resolution shall be reported out by committee with recommendations and shall become pending business.

Within 3 legislative days of being reported out.—Shall be voted on unless otherwise determined by yeas and nays.

Within 15 calendar days of concurrent resolution passed by one House and referred to other body's appropriate committee.—Shall be reported out by committee and become pending business.

Within 3 legislative days of being reported out by committee.—Shall be voted on unless otherwise determined by yeas and nays.

Section 7. Termination of Congress

Section 7 deals with a situation in which a Congress terminates during the 120-day period specified in subsection 4(b) without having taken final action to approve or disapprove a commitment of armed forces.

The committee did not wish to force the President to cease a military action abroad simply because Congress was not in session at the expiration of 120 days and it had not been possible to take final action before adjournment.

Thus, section 7 provides that in such a case the 120-day period shall not expire *sooner than* 48 days after the convening of the next succeeding Congress, providing that a resolution or bill is introduced pursuant to subsection 4(b) within 3 days of the convening of the next succeeding Congress. This language is meant to insure that in any case in which the 120-day period is interrupted by statutory termination of Congress without congressional action, there would be an extension of the period. It also would allow the antifilibuster provisions to come into effect.

Section 8. Interpretation of act

Section 8 deals with the construction, intent, and effect of the resolution.

The intent of subsection (a) is to disclaim any intention of altering the constitutional grants of war powers to the legislative and executive branches. It thereby helps insure the constitutionality of the resolution by making it clear that nothing in it can be interpreted as changing in any way the powers delegated to each branch of government by the Constitution. In addition, it reassures U.S. allies that passage of the resolution will not affect U.S. obligations under mutual defense agreements and other treaties to which the United States is a party.

The intent of subsection (b) is to state explicitly that nothing in the resolution "*shall be construed to represent congressional accept-*

ance of the proposition that Executive action alone can satisfy the constitutional process requirement contained in the provisions of mutual security treaties to which the United States is a party."

This statement is aimed at rejecting those interpretations of the treaty obligations of the United States which hold that mutual security treaties such as NATO, SEATO, and ANZUS are "self-executing" and do not require congressional sanction of any kind for Presidential actions taken in pursuit of such obligations, including actions which involve the deployment of U.S. Armed Forces into hostilities.

The intent of subsection (c) is to emphasize that this resolution does not grant the President any new authority and, in connection with the 120-day period referred to in section 4(b), that the President would not have any freedom of action during the 120-day period which he does not already have.

Section 9. Applicability to certain existing commitments

This section provides that the resolution would apply to those commitments of U.S. Armed Forces to hostilities which are *in progress* on the date of its enactment into law. The section further provides that upon enactment of the resolution the President should proceed to file the report as required by section 3 and that the 120-day period called for by subsection 4(b) would begin on the date of the filing of the report.

Section 10. Effective date

This section states that the resolution, except to the extent otherwise provided in section 9, shall take effect on the date of its enactment.

USE OF A CONCURRENT RESOLUTION

Section 4(c) provides that an action by the President committing U.S. troops to hostilities or into areas or situations where hostilities are imminent could be terminated by both Houses of Congress acting through a concurrent resolution. Some question has been raised about the constitutionality of the use of a concurrent resolution for this purpose. After careful study of the issues involved the committee believes that there is ample precedent for the use of the concurrent resolution to "veto" or disapprove a future action of the President, which action was previously authorized by a joint resolution or bill.

There are many examples of legislative actions which have the effect of law without a Presidential signature. Perhaps the most notable is the ability of Congress to veto executive branch reorganization plans under the Executive Reorganization Act. Other examples are amendments to the Constitution of the United States and orders to spend money appropriated to the use of the Congress.

Further, most of the important legislation enacted for the prosecution of World War II provided that the powers granted to the President would come to an end upon adoption of concurrent resolutions to that purpose. Among those acts were:

- The Lend-Lease Act;
- First War Powers Act;
- Emergency Price Control Act;
- Stabilization Act of 1942;
- War Labor Disputes Act.

In more recent times both the Middle East Resolution and the Gulf of Tonkin Resolution provided for their repeal by concurrent resolution.

This use of a concurrent resolution has been accepted by various authorities as a constitutionally valid practice. It might be noted that Senator Sam J. Ervin, a noted constitutional scholar, has authored a bill which would permit international executive agreements to be "vetoed" by the Congress through passage of a concurrent resolution. This proposal has been endorsed by many constitutional experts and a former Supreme Court justice.

The constitutional validity of such usage of a concurrent resolution is based on the capacity of Congress to limit or to terminate the authority it delegates to the Executive. In the case of the war powers, the Constitution is clear that the power to declare war, as well as the power to raise and maintain an army and a navy, belong to Congress. Under the Constitution, the President is designated as the Commander in Chief to prosecute wars authorized by Congress.

When the President commits U.S. Armed Forces to hostilities abroad on his own responsibility, he has, in effect, assumed congressional authority. Under this war powers resolution the Congress can rescind that authority as it sees fit by a concurrent resolution and thereby avoid the problem of a Presidential veto. The authority for the Congress to establish a legislative process for rescinding an assumed power to act on the part of the President can be found in Article I, Section 8, of the Constitution through the "necessary and proper" clause.

This authority of Congress was recognized as legitimate when Congress passed legislation permitting the President to prosecute World War II. This authority of Congress was recognized as legitimate in the passage of the Middle East Resolution and the Gulf of Tonkin Resolution. It is no less legitimate and constitutional today as embodied in this war powers resolution.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES MAILLIARD, BROOMFIELD, MATHIAS, GUYER, AND VANDER JAGT

We voted in committee to report this resolution because we strongly support the reporting and consulting provisions of the legislation, although we have equally strong reservations over the operating provisions. In our opinion the House should have the opportunity to debate the resolution.

It is our hope that as the House works its will, the Members will carefully scrutinize section 4 (b) and (c). In our opinion, section 4(b) is dangerous and perhaps unconstitutional. It would unwisely put into law a provision whereby the failure of the Congress to act could force Presidential action with major national and international implications. Specifically, section 4(b) requires that within 120 calendar days after a report is submitted or required to be submitted pursuant to section 3, the President shall terminate any commitment and remove any enlargement of U.S. 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 U.S. Armed Forces. In our opinion, the Congress ought to exercise its powers in a positive way and not have major consequences ensue from the inaction of the Congress.

There are several objections to terminating the President's authority in this manner. Recognizing that the war powers are shared by the President and the Congress, the President—to cite one example—obviously has the authority to commit U.S. Armed Forces stationed overseas to hostilities in order that they might protect themselves from attack or threat of imminent attack. We doubt that the Congress can constitutionally terminate the President's authority to protect the Armed Forces. We further doubt that the Congress can constitutionally terminate the President's authority by a failure to act, as provided for by section 4(b).

This section appears to be as unwise as it may be unconstitutional. Section 4(b) could require the disengagement of our Armed Forces even in the face of a continuing attack. It could destroy an adversary's incentive to reach an early settlement of a dispute, since he surely would hope that the Congress—by failure to act or otherwise—would compel the President to disengage U.S. Armed Forces.

We should also consider the constitutionality of section 4(c), which would permit the Congress by a concurrent resolution to require the President to disengage U.S. Armed Forces from hostilities. We have no problem with the policy envisioned in section 4(c); namely that in exercising a shared constitutional power a majority of both Houses

of Congress should have the power to require the disengagement of Armed Forces committed to hostilities by the President without congressional approval.

We would, however, call attention to the constitutional question of whether a concurrent resolution, not requiring the approval of the President, would be binding upon the President.

WILLIAM S. MAILLIARD,
WILLIAM S. BROOMFIELD,
ROBERT B. (BOB) MATHIAS,
TENNYSON GUYER,
GUY VANDER JAGT.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES BUCHANAN AND WHALEN

We concur that there is great need for war powers legislation. Congress must possess the means by which it can act on the question of placing U.S. Armed Forces in combat. House Joint Resolution 542 goes a long way toward providing such a mechanism.

Nevertheless, the language in section 4(b) troubles us. It permits the exercise of congressional will through inaction. It is our opinion that in order to fulfill its constitutional responsibility, Congress must act, whether it be in a positive or negative manner.

Therefore, during the committee's markup of the resolution, we supported replacing the committee's language in section 4(b) with an amendment similar to the following:

Not later than one hundred twenty days after the receipt of the report of the President provided for in section 3 of this Act, the Congress, by a declaration of war or by the enactment within such period of a bill or resolution appropriate to the purpose, shall either approve, ratify, confirm, and authorize the continuation of the action taken by the President and reported to the Congress, or shall disapprove, in which case the President shall terminate any commitment and remove any enlargements of the United States Armed Forces with respect to which such report was submitted.

We shall offer this amendment during floor debate on House Joint Resolution 542. On an issue which may involve the death of thousands of Americans, we cannot delude ourselves that no action at all is an appropriate response. Rather, each Member of Congress should declare his views—through a “yes” or “no” vote—when the President commits our Armed Forces to combat or substantially enlarges our military presence abroad. Passage of our amendment will afford this opportunity.

JOHN BUCHANAN,
CHARLES W. WHALEN, JR.

MINORITY VIEWS OF REPRESENTATIVES FRELINGHUYSEN, DERWINSKI,
THOMPSON, AND BURKE

We are opposed to the enactment of House Joint Resolution 542. Its most important provisions are probably unconstitutional and certainly are unwise. We strongly doubt the wisdom of attempting to draw rigid lines between the President and Congress in the area of warmaking powers. Ironically, enactment of this resolution in some respects would expand considerably the constitutional authority of the President, and in other respects would severely restrict his authority. In our opinion, the only appropriate way to make such far-reaching changes would be by an amendment to the Constitution.

While we are in accord with the understandable desire of Members to assure Congress its proper role in national decisions of war and peace, we consider the severe restrictions which this resolution seeks to impose on the authority of the President to be dangerous. Should they become effective, they could affect adversely important national security interests of the United States.

Flexibility—not the exact delimitation of powers—is a basic characteristic of the Constitution. The framers of the Constitution clearly had that aim in mind when they refrained from closely defining the responsibilities of the executive and legislative branches in the areas of warmaking powers. Moreover, throughout our history, Presidents have employed the power which that flexibility has allowed them to encourage peaceful resolutions of potentially dangerous situations.

What is most ironic is that this joint resolution, constructed as it is with an eye to our unfortunate experiences during the mid-1960's, would not have prevented our steadily deepening involvement in Vietnam, had it been on the books 10 years ago. For example, there is no reason to believe that Congress after the Gulf of Tonkin incident would have refused to approve Presidential action through the mechanism provided in this measure. Congress at the time would have declared war, had that been requested, or we would have specifically authorized the use of our Armed Forces.

House Joint Resolution 542 cannot give Congress foresight or wisdom, and will not force an uncooperative Executive to be more forthcoming. In fact, it may achieve just the opposite effect. A President faced with a possible congressional veto of his actions might be tempted to circumvent Congress. He might, for example, appeal directly to the American people in order to force Congress to support him. If that were to happen, Congress could be virtually excluded from the decisionmaking process. Moreover, House Joint Resolution 542, which seeks to provide a "trip wire," invoking restrictions on Executive action, might well encourage a President to be less than candid when setting forth the circumstances and justifications for his actions.

Following are our views in more detail with respect to each section of the resolution.

Section 2, and most of section 3, seek to insure reasonable consultation with Congress, by requiring submission of reports to Congress by the President whenever he commits the U.S. forces to hostilities or potentially hostile situations, or when he enlarges our combat forces already located in foreign nations. Essentially the same provisions have been enacted previously by the House of Representatives in two preceding Congresses. Section 4(a), which seeks to insure prompt action by Congress on such reports, also is the same language as that already twice approved by the House. We consider these requirements to be entirely appropriate.

We have reservations, however, about the wisdom of the inclusion of section 3(d), language which was not contained in the resolutions previously approved by the House. Section 3(d) requires that the President communicate to Congress the estimated financial cost of any commitment of U.S. forces outside the United States. What point would there be in requiring the President to announce at the outset of a national security emergency his judgment as to the cost of committing of our forces? It may be argued that Congress needs a specific estimate of costs in order to help us make up our minds about whether or not to support the President. In our opinion, that information would be of no particular value to Congress but might be extremely revealing to an enemy. We believe that Congress would receive adequate information under the requirements of the other subsections of section 3, and that the advantages to be gained by hostile powers through the required financial disclosure would far outweigh any incremental benefit to Congress.

Section 4 (b) and (c) are at the heart of our objections to the resolutions. Section 4(b) provides that the President at the end of 120 days, without regard even to the immediate safety of our armed forces, must terminate any involvement of U.S. forces in hostilities outside the United States, and withdraw newly dispatched combat forces from the area of any foreign country (except for supply, replacement, repair or training deployments), unless the Congress by that time has enacted a declaration of war or "specifically" authorized the use of our Armed Forces.

This effort to limit the President's power—by the failure of Congress to take affirmative action—strikes us as highly dangerous. For example, suppose the President were to commit troops in Europe in order to defend our own country? That he has such power as Commander in Chief is not challenged, but the 120-day limitation might make it necessary for him to withdraw troops already fully committed to combat. At best, the limitation could only be construed as an effort to circumscribe sharply his ability to continue to exercise his power. To avoid such a reversal of national policy, a President might hurriedly escalate hostilities, to force Congress to support him, or in an effort to win the conflict within 120 days—or an enemy might seek to avoid negotiating a settlement in the belief that the President would soon be forced to withdraw our troops. Thus the 120-day provision might actually promote, rather than deter, our involvement in hostilities.

Proponents may argue that in such a situation Congress would recognize the necessity of declaring war, or of specifically authorizing the use of troops. As a practical matter, however, Congress does not

always move quickly and a legislative deadlock might develop. Moreover, in our opinion it is highly undesirable for Congress, through its own inaction, to be able to determine whether a course of Presidential action should be continued.

The manifold constitutional and national security problems created by the 120-day provision of section 4(b) are compounded by section 4(c). This section provides that hostilities and deployments may be terminated by Congress alone at any time within the 120-day period, by means of a concurrent resolution having no force of law.

If the Commander in Chief, acting within his constitutional authority, orders our forces to deploy or to engage in hostilities, Congress may affect such action if it wishes, but necessarily must do so through use of its constitutionally granted powers. By seeking to provide that a concurrent resolution shall have the force of law, we are embarking on an extremely dangerous, and probably unconstitutional course of action.

There may be cases in which Congress has specifically authorized hostilities or deployments by constitutional means other than a declaration of war. Under Article I, Section 7 of the Constitution, authority granted by any bill, order or resolution may be repealed or amended only through the same process; once Congress has given its consent to legislation it may not be withdrawn unilaterally by the Congress with less than a two-thirds vote.

Section 5 is another example of the difficulty of trying to establish rigid procedures where, in fact, flexibility is required. During committee consideration it was clear that the practical effects of the time requirements were not adequately explored. For example, the question was raised, if the beginning of the last 45 days of the 120-day period coincided with the end of a Congress, would be the 15 days for committee consideration be binding upon the next Congress? A related question was whether Congress would be able to organize quickly enough to meet the deadline. These questions, in our opinion, were not answered satisfactorily.

While sections 7 and 8 are generally helpful, given their context, we strongly oppose the requirement of section 9 that this resolution be applied retroactively to cover hostilities existing on the day of its enactment which were previously authorized and initiated.

The proper and most useful role for Congress to play, in decisions of war and peace, cannot be developed through confrontation with the Executive. To function effectively, particularly in times of national crisis, our system of government must exhibit a maximum amount of cooperation between the two branches—executive and legislative. In the past such cooperation has been the means by which we have achieved successful policy decisions. It is to this end that we should be striving. House Joint Resolution 542 will not help—indeed, we believe it will seriously impede—the achievement of this objective.

PETER H. B. FRELINGHUYSEN,
EDWARD J. DERWINSKI,
VERNON W. THOMSON,
J. HERBERT BURKE.

Letter of July 16, 1974, to Former Secretary of State Henry A. Kissinger, From Hon. Thomas E. Morgan, Former Chairman, Committee on Foreign Affairs, and Hon. J. W. Fulbright, Former Chairman, Committee on Foreign Relations

COMMITTEE ON FOREIGN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 16, 1974.

HON. HENRY A. KISSINGER,
*Secretary of State,
Department of State,
Washington, D.C.*

DEAR MR. SECRETARY: We are writing to you concerning implementation of Public Law 93-148, the War Powers Resolution. As you know, this legislation established by statute the requirements and procedures to be followed to ensure the exercise by the Congress of its constitutional responsibilities concerning any decision to involve the United States Forces in hostilities. We believe that the effective and diligent implementation of P.L. 93-148 can remove from contention an area which has been a subject of strain between the Executive Branch and the Congress in recent years.

Because the statutory mechanisms for implementation of the procedures set out in the law are activated in the first instance by the reporting system mandated in Section 4, we would like to know what arrangements have been made within the Executive Branch to ensure full and timely compliance. Specifically, we would like to know which responsible official within the Executive Branch has been designated as the "action officer" with respect to the Section 4 reporting requirements. Moreover, if the designated person is a civilian official such as the Legal Advisor of the Department of State, we would like to know what arrangements have been made for coordination with the pertinent elements in the military chain of command to ensure that he has full and immediate access to all information required to be reported to the Congress under the law.

We also believe that it may be useful for staff members of the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives to meet with officials of the Executive Branch designated by you for purposes of discussing the details of those implementation arrangements which require careful coordination and cooperation between the Congress and the Executive.

Sincerely,

THOMAS E. MORGAN.

J. W. FULBRIGHT.

Letter of September 7, 1974, to Hon. Thomas E. Morgan, Former
Chairman, Committee on Foreign Affairs, From Former Secretary
of State Henry A. Kissinger

THE SECRETARY OF STATE,
Washington, D.C., September 7, 1974.

Hon. THOMAS E. MORGAN,
*Chairman, Committee on Foreign Affairs,
House of Representatives.*

DEAR MR. CHAIRMAN: I appreciate the suggestions made in your letter of July 16 concerning implementation of the War Powers Resolution (P.L. 93-148). I am taking this matter up with the Secretary of Defense and will be back in touch with you as soon as our plans are developed.

Best regards,

HENRY A. KISSINGER.

(38)

Letter of October 7, 1974, to Hon. Thomas E. Morgan, Former
Chairman, Committee on Foreign Affairs, From Former Secretary
of State Henry A. Kissinger

THE SECRETARY OF STATE,
Washington, October 7, 1974.

Hon. THOMAS E. MORGAN,
*Chairman, Committee on Foreign Affairs,
House of Representatives.*

DEAR MR. CHAIRMAN: On July 16 you wrote to me regarding the implementation of the War Powers Resolution. In particular, you asked what arrangements had been made within the Executive Branch to insure "full and timely compliance" with the reporting requirement of Section 4 of the Resolution. I am pleased to inform you that since my September 7 letter to you on this matter, Secretary Schlesinger and I have agreed that our respective legal counsels will be jointly responsible for bringing immediately to our attention cases where it would be appropriate for us to recommend to the President that a report be submitted to the Congress pursuant to Section 4 of the War Powers Resolution.

With regard to the question of access to information, I understand that several months ago the Office of the Secretary of Defense instituted an arrangement whereby the Legal Adviser to the Chairman of the Joint Chiefs of Staff informs the Department of Defense General Counsel of all troop deployment actions routed through the Chairman's office which could raise a question as to whether a report to the Congress is required. In implementation of that arrangement a written instruction was promulgated establishing a War Powers Reporting System within the Operations Directorate of the JCS. Arrangements have been made for this Department's Legal Adviser to receive the same information as is supplied to the DOD General Counsel. Consultations between the two departments' legal counsels will be arranged as needed.

George Aldrich, the Acting Legal Adviser, would be pleased to arrange for further discussions of this matter with you or with members of your staff if you so desire.

Best regards,

HENRY A. KISSINGER.

(39)

Report Dated April 4, 1975, From Former President Gerald R. Ford to Hon. Carl Albert, Former Speaker of the House of Representatives, in Compliance With Section 4(a)(2) of the War Powers Resolution, Relative to the Transport of Refugees From Danang

APRIL 4, 1975.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Peking, China

(C/O Ambassador Bush).

As you know, last Saturday I directed United States participation in an international humanitarian relief effort to transport refugees from Danang and other seaports to safer areas farther south in Vietnam. The United States has been joined in this humanitarian effort by a number of other countries who are offering people, supplies and vessels to assist in this effort. This effort was undertaken in response to urgent appeals from the Government of the Republic of Vietnam because of the extremely grave nature of the circumstances involving the lives of hundreds of thousands of refugees. This situation has been brought about by large-scale violations of the Agreement Ending the War and Restoring the Peace in Vietnam by the North Vietnamese who have been conducting massive attacks on the northern and central provinces of South Vietnam.

In accordance with my desire to keep the Congress fully informed on this matter, and taking note of the provision of section 4(a)(2) of the War Powers Resolution (Public Law 93-148), I wish to report to you concerning one aspect of United States participation in the refugee evacuation effort. Because of the large number of refugees and the overwhelming dimensions of the task, I have ordered U.S. Naval vessels to assist in this effort, including Amphibious Task Group 76.8 with 12 embarked helicopters and approximately 700 Marines. These naval vessels have been authorized to approach the coast of South Vietnam to pick up refugees and U.S. nationals, and transport them to safety. Marines are being detailed to vessels participating in the rescue mission. The first vessel entered South Vietnam territorial waters at 0400 a.m. EDT on April 3, 1975.

Although these forces are equipped for combat within the meaning of section 4(a)(2) of Public Law 93-148, their sole mission is to assist in the evacuation including the maintenance of order on board the vessels engaged in that task.

As stated above, the purpose of the introduction of United States Naval vessels into Vietnamese waters is to assist in an international humanitarian effort involving vessels of several nations, including both military and civilian craft. The United States participation in this effort includes the charter of commercial vessels, the use of Military Sealift Command vessels with civilian crews, as well as United States naval vessels with military crews. This effort is being undertaken pursuant to the President's constitutional authority as

Commander-in-Chief and Chief Executive in the conduct of foreign relations and pursuant to the Foreign Assistance Act of 1961, as amended, which authorizes humanitarian assistance to refugees, civilian war casualties and other persons disadvantaged by hostilities or conditions relating to hostilities in South Vietnam.

You will appreciate, I am sure, my difficulty in telling you precisely how long United States forces may be needed in this effort. Our present estimate, however, is that this operation may involve the presence of United States Naval vessels in Vietnamese waters for a period of at least several weeks.

GERALD R. FORD.

Report Dated April 12, 1975, From Former President Gerald R. Ford to Hon. Carl Albert, Former Speaker of the House of Representatives, in Compliance With Section 4(a)(2) of the War Powers Resolution, Relative to the Evacuation of U.S. Nationals From Cambodia

THE WHITE HOUSE,
Washington, D.C., April 12, 1975.

HON. CARL ALBERT,
Speaker, U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: As you and other members of Congress were advised, in view of circumstances in Cambodia, the United States had certain contingency plans to utilize United States Armed Forces to assure the safe evacuation of U.S. Nationals from that country. On Friday, 11 April 1975, the Khmer Communists forces had ruptured Government of the Khmer Republic (GKR) defense lines to the north, northwest and east of Phnom Penh and were within mortar range of Pochentong Airfield and the outskirts of Phnom Penh. In view of this deteriorating military situation, and on the recommendations of the American Ambassador there, I ordered U.S. military forces to proceed with the planned evacuation out of consideration for the safety of U.S. citizens.

In accordance with my desire that the Congress be fully informed on this matter, and taking note of Section 4 of the War Powers Resolution (P.L. 93-148), I wish to report to you that the first elements of the U.S. forces entered Cambodian airspace at 8:34 P.M. EDT on 11 April. Military forces included 350 ground combat troops of the U.S. Marines, 36 helicopters, and supporting tactical air and command and control elements. The Marines were deployed from helicopters to assure the security of helicopter landing zone within the city of Phnom Penh. The first helicopter landed at approximately 10:00 P.M. EDT 11 April 1975, and the last evacuees and ground security force Marines departed the Cambodian landing zone at approximately 12:20 A.M. on 12 April 1975. The last elements of the force to leave received hostile recoilless rifle fire. There was no firing by U.S. forces at any time during the operation. No U.S. Armed Forces personnel were killed, wounded or missing, and there were no casualties among the American evacuees.

Although these forces were equipped for combat within the meaning of Section 4(a)(2) of Public Law 93-148, their mission was to effect the evacuation of U.S. Nationals. Present information indicates that a total of 82 U.S. citizens were evacuated and that the task force was also able to accommodate 35 third country nationals and 159 Cambodians including employees of the U.S. Government.

The operation was ordered and conducted pursuant to the President's Constitutional executive power and authority as Commander-in-Chief of U.S. Armed Forces.

I am sure you share with me my pride in the Armed Forces of the United States and my thankfulness that the operation was conducted without incident.

Sincerely,

GERALD R. FORD.

Report Dated April 30, 1975, From Former President Gerald R. Ford to Hon. Carl Albert, Former Speaker of the House of Representatives, in Compliance With Section 4 of the War Powers Resolution, Relative to the Evacuation of U.S. Citizens and Others From South Vietnam

THE WHITE HOUSE,
Washington, April 30, 1975.

The Honorable the SPEAKER,
*U.S. House of Representatives,
Washington, D.C.*

DEAR MR. SPEAKER: On April 4, 1975, I reported that U.S. naval vessels had been ordered to participate in an international humanitarian relief effort to transport refugees and U.S. nationals to safety from Danang and other seaports in South Vietnam. This effort was undertaken in response to urgent appeals from the Government of South Vietnam and in recognition of the large-scale violations by the North Vietnamese of the Agreement Ending the War and restoring the Peace in Vietnam.

In the days and weeks that followed, the massive North Vietnamese attacks continued. As the forces of the Government of South Vietnam were pushed further back toward Saigon, we began a progressive withdrawal of U.S. citizens and their dependents in South Vietnam, together with foreign nationals whose lives were in jeopardy.

On April 28, the defensive lines to the northwest and south of Saigon were breached. Tan Son Nhut Airfield and Saigon came under increased rocket attack and for the first time received artillery fire. NVA forces were approaching within mortar and anti-aircraft missile range. The situation at Tan Son Nhut Airfield deteriorated to the extent that it became unusable. Crowd control on the airfield was breaking down and the collapse of the Government forces within Saigon appeared imminent. The situation presented a direct and imminent threat to the remaining U.S. citizens and their dependents in and around Saigon.

On the recommendation of the American Ambassador there, I ordered U.S. military forces to proceed by means of rotary wing aircraft with an emergency final evacuation out of consideration for the safety of U.S. citizens.

In accordance with my desire to keep the Congress fully informed on this matter, and taking note of the provision of section 4 of the War Powers Resolution (Public Law 93-148), I wish to report to you that at about 1:00 A.M. EDT, April 29, 1975, U.S. forces entered South Vietnam airspace. A force of 70 evacuation helicopters and 865 Marines evacuated about 1400 U.S. citizens, together with approximately 5500 third country nationals and South Vietnamese, from landing zones in the vicinity of the U.S. Embassy, Saigon, and the Defense Attache Office at Tan Son Nhut Airfield. The last elements of the ground security force departed Saigon at 7:46 P.M. EDT

April 29, 1975. Two crew members of a Navy search and rescue helicopter are missing at sea. There are no other known U.S. casualties from this operation, although two U.S. Marines on regular duty in the compound of the Defense Attaché Office at Tan Son Nhut Airfield had been killed on the afternoon (EDT) of April 28, 1975, by rocket attacks into a refugee staging area. U.S. fighter aircraft provided protective air cover for this operation, and for the withdrawal by water of a few Americans from Can Tho, and in one instance suppressed North Vietnamese anti-aircraft artillery firing upon evacuation helicopters as they departed. The ground security forces on occasion returned fire during the course of the evacuation operation.

The operation was ordered and conducted pursuant to the President's Constitutional executive power and his authority as Commander-in-Chief of U.S. Armed Forces.

The United States Armed Forces performed a very difficult mission most successfully. Their exemplary courage and discipline are deserving of the nation's highest gratitude.

Sincerely,

GERALD R. FORD.

Report Dated May 15, 1975, From Former President Gerald R. Ford to Hon. Carl Albert, Former Speaker of the House of Representatives, in Compliance With Section 4(a)(1) of the War Powers Resolution, Relative to the *Mayaguez* Incident

THE WHITE HOUSE,
Washington, D.C., May 15, 1975.

The Honorable the SPEAKER,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On 12 May 1975, I was advised that the SS *Mayaguez*, a merchant vessel of United States registry enroute from Hong Kong to Thailand with a U.S. citizen crew, was fired upon, stopped, boarded, and seized by Cambodian naval patrol boats of the Armed Forces of Cambodia in international waters in the vicinity of Poulo Wai Island. The seized vessel was then forced to proceed to Koh Tang Island where it was required to anchor. This hostile act was in clear violation of international law.

In view of this illegal and dangerous act, I ordered, as you have been previously advised, United States military forces to conduct the necessary reconnaissance and to be ready to respond if diplomatic efforts to secure the return of the vessel and its personnel were not successful. Two United States reconnaissance aircraft in the course of locating the *Mayaguez* sustained minimal damage from small firearms. Appropriate demands for the return of the *Mayaguez* and its crew were made, both publicly and privately, without success.

In accordance with my desire that the Congress be informed on this matter and taking note of Section 4(a)(1) of the War Powers Resolution, I wish to report to you that at about 6:20 A.M., 13 May, pursuant to my instructions to prevent the movement of the *Mayaguez* into a mainland port, U.S. aircraft fired warning shots across the bow of the ship and gave visual signals to small craft approaching the ship. Subsequently, in order to stabilize the situation and in an attempt to preclude removal of the American crew of the *Mayaguez* to the mainland, where their rescue would be more difficult, I directed the United States Armed Forces to isolate the island and interdict any movement between the ship or the island and the mainland, and to prevent movement of the ship itself, while still taking all possible care to prevent loss of life or injury to the U.S. captives. During the evening of 13 May, a Cambodian patrol boat attempting to leave the island disregarded aircraft warnings and was sunk. Thereafter, two other Cambodian patrol craft were destroyed and four others were damaged and immobilized. One boat, suspected of having some U.S. captives aboard, succeeded in reaching Kompong Som after efforts to turn it around without injury to the passengers failed.

Our continued objective in this operation was the rescue of the captured American crew along with the retaking of the ship *Mayaguez*. For that purpose, I ordered late this afternoon an assault by United States Marines on the island of Koh Tang to search out and rescue

such Americans as might still be held there, and I ordered retaking of the *Mayaguez* by other marines boarding from the destroyer escort *Holt*. In addition to continued fighter and gunship coverage of the Koh Tang area, these marine activities were supported by tactical aircraft from the *Coral Sea*, striking the military airfield at Ream and other military targets in the area of Kompong Som in order to prevent reinforcement or support from the mainland of the Cambodian forces detaining the American vessel and crew.

At approximately 9:00 P.M. EDT on 14 May, the *Mayaguez* was retaken by United States forces. At approximately 11:30 P.M., the entire crew of the *Mayaguez* was taken aboard the *Wilson*. U.S. forces have begun the process of disengagement and withdrawal.

This operation was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces.

Sincerely,

GERALD R. FORD.

Report Dated April 26, 1980, From Former President Jimmy Carter to Hon. Thomas P. O'Neill, Jr., Speaker of the House of Representatives, in Compliance With Section 4(a) of the War Powers Resolution, Relative to the Aborted Rescue Attempt in Iran

THE WHITE HOUSE,
Washington, D.C., April 26, 1980.

HON. THOMAS P. O'NEILL, JR.,
Speaker of the U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Because of my desire that Congress be informed on this matter and consistent with the reporting provisions of the War Powers Resolution of 1973 (Public Law 93-148), I submit this report.

On April 24, 1980, elements of the United States Armed Forces under my direction commenced the positioning stage of a rescue operation which was designed, if the subsequent stages had been executed, to effect the rescue of the American hostages who have been held captive in Iran since November 4, 1979, in clear violation of international law and the norms of civilized conduct among nations. The subsequent phases of the operation were not executed. Instead, for the reasons described below, all these elements were withdrawn from Iran and no hostilities occurred.

The sole objective of the operation that actually occurred was to position the rescue team for the subsequent effort to withdraw the American hostages. The rescue team was under my overall command and control and required my approval before executing the subsequent phases of the operation designed to effect the rescue itself. No such approval was requested or given because, as described below, the mission was aborted.

Beginning approximately 10:30 AM EST on April 24, six U.S. C-130 transport aircraft and eight RH-53 helicopters entered Iran airspace. Their crews were not equipped for combat. Some of the C-130 aircraft carried a force of approximately 90 members of the rescue team equipped for combat, plus various support personnel.

From approximately 2 to 4 PM EST the six transports and six of the eight helicopters landed at a remote desert site in Iran approximately 200 miles from Tehran where they disembarked the rescue, commenced refueling operations and began to prepare for the subsequent phases.

During the flight to the remote desert site, two of the eight helicopters developed operating difficulties. One was forced to return to the carrier *Nimitz*; the second was forced to land in the desert, but its crew was taken aboard another of the helicopters and proceeded on to the landing site. Of the six helicopters which landed at the remote desert site, one developed a serious hydraulic problem and was unable to continue with the mission. The operational plans called for a minimum of six helicopters in good operational condition able to proceed from the desert site. Eight helicopters had been included in the force to provide sufficient redundancy without imposing excessive strains on the refueling and exit requirements of the operation. When the number of helicopters available to continue dropped to five, it was determined that the operation could not proceed as planned. Therefore, on the recommendation of the force commander and my military advisers, I decided to cancel the mission and ordered the United States Armed Forces involved to return from Iran.

During the process of withdrawal, one of the helicopters accidentally collided with one of the C-130 aircraft, which was preparing to take off, resulting in the death of eight personnel and the injury of several others. At this point, the decision was made to load all surviving personnel aboard the remaining C-130 aircraft and to abandon the remaining helicopters at the landing site. Altogether, the United States Armed Forces remained on the ground for a total of approximately three hours. The five remaining aircraft took off about 5:45 PM EST and departed from Iran airspace without further incident at about 8:00 PM EST on April 24. No United States Armed Forces remain in Iran.

The remote desert area was selected to conceal this phase of the mission from discovery. At no time during the temporary presence of United States Armed Forces in Iran did they encounter Iranian forces of any type. We believe, in fact, that no Iranian military forces were in the desert area, and that the Iranian forces were unaware of the presence of United States Armed Forces until after their departure from Iran. As planned, no hostilities occurred during this phase of the mission—the only phase that was executed.

At one point during the period in which United States Armed Forces elements were on the ground at the desert landing site a bus containing forty-four Iranian civilians happened to pass along a nearby road. The bus was stopped and then disabled. Its occupants were detained by United States Armed Forces until their departure, and then released unharmed. One truck closely followed by a second vehicle also passed by while United States Armed Forces elements were on the ground. These elements stopped the truck by a shot into its headlights. The driver ran to the second vehicle which then escaped across the desert. Neither of these incidents affected the subsequent decision to terminate the mission.

Our rescue team knew, and I knew, that the operation was certain to be dangerous. We were all convinced that if and when the rescue phase of the operation had been commenced, it had an excellent chance of success. They were all volunteers; they were all highly trained. I met with their leaders before they went on this operation. They knew then what hopes of mine and of all Americans they carried with them. I share with the nation the highest respect and appreciation for the ability and bravery of all who participated in the mission.

To the families of those who died and who were injured, I have expressed the admiration I feel for the courage of their loved ones and the sorrow that I feel personally for their sacrifice.

The mission on which they were embarked was a humanitarian mission. It was not directed against Iran. It was not directed against the people of Iran. It caused no Iranian casualties.

This operation was ordered and conducted pursuant to the President's powers under the Constitution as Chief Executive and as Commander-in-Chief of the United States Armed Forces, expressly recognized in Section 8(d)(1) of the War Powers Resolution. In carrying out this operation, the United States was acting wholly within its right, in accordance with Article 51 of the United Nations Charter, to protect and rescue its citizens where the government of the territory in which they are located is unable or unwilling to protect them.

Sincerely,

JIMMY CARTER.

Legal Opinion of May 9, 1980, by Lloyd Cutler, the President's Counsel, on War Powers Consultation Relative to the Iran Rescue Mission

1. In my opinion, the President's decision to use the armed forces in an attempt to rescue the American hostages in Iran, without consulting Congress before taking this action, was a lawful exercise of his constitutional powers as President and Commander-in-Chief, and did not violate the War Powers Resolution of 1973.

2. The President's constitutional power to use the armed forces to rescue Americans illegally detained abroad is clearly established. *In re Neagle*, 135 U.S. 1, *Durand v. Hollings*, 8 Fed. Cases 111. This power was expressly recognized in the Senate version of the War Powers Resolution, and is not negated by the final version of the Resolution, especially where, as here, those to be rescued include United States Marines.

3. His inherent constitutional power to conduct this kind of rescue operation, which depends on total surprise, includes the power to act before consulting Congress, if the President concludes, as he did in this case, that to do so would unreasonably endanger the success of the operation and the safety of those to be rescued.

4. Section 3 of the War Powers Resolution does require consulting with Congress "in every possible instance" before introducing United States Armed Forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." In this case, the first stage of the operation—introducing the rescue team into Iran during the night of April 24—did not involve any hostilities. The rescue effort itself was not to be initiated before the following night, and could have been aborted before any involvement in hostilities was "clearly indicated," and this is in fact what occurred.

5. In any event, Section 8(d)(1) of the War Powers Resolution provides that nothing in it "is intended to alter the constitutional authority of the Congress or of the President." If Section 3 were read to require prior consultation in these precise circumstances—where the President has inherent constitutional authority to conduct a rescue operation dependent on surprise and reasonable ground to believe that prior consultation would unreasonably endanger the success of the operation and the safety of those to be rescued—this would raise grave issues as to the constitutionality of Section 3. Since statutes and joint resolutions are to be read where possible in a manner that does not raise such grave constitutional issues, Section 3 and Section 8(d)(1), read together, should not be construed to require prior consultation under the precise circumstances of this case. *Eastern Railroad Conference v. Noerr*, 365 U.S. 127 (1961); *California v. Arizona*, 440 U.S. 59 (1979).

Letter of March 6, 1981, to Secretary of State Alexander M. Haig from Hon. Clement J. Zablocki, Chairman, Committee on Foreign Affairs

COMMITTEE ON FOREIGN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 6, 1981.

HON. ALEXANDER M. HAIG,
Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: There is growing congressional interest and concern over President Reagan's recent decision to send additional U.S. military personnel to El Salvador as it relates to the requirements of the Arms Export Control Act and the War Powers Resolution.

In order to enhance congressional ability to independently judge compliance with these two Acts, I respectfully request that the Committee on Foreign Affairs be provided with the following information:

1. A copy of the instructions and guidelines governing the activities of U.S. military personnel in El Salvador; and
2. A periodic report describing the internal security situation in El Salvador and the activities of U.S. military personnel there.

Your cooperation in this respect would have the benefit of increasing the confidence of the American people and the world community that the U.S. Government is fully committed to avoiding U.S. participation in any activity of a combat nature or involvement in any combat operation in El Salvador.

With best wishes, I am
Sincerely yours,

CLEMENT J. ZABLOCKI.

(50)

Letter of April 6, 1981, to Hon. Clement J. Zablocki, Chairman, Committee on Foreign Affairs, from Hon. Richard Fairbanks, Assistant Secretary of State for Congressional Relations

DEPARTMENT OF STATE,
Washington, D.C., April 6, 1981.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: I am responding to your letter of March 6 to the Secretary concerning U.S. military personnel in El Salvador. Members of the Senate Foreign Relations Committee have expressed similar concerns and I am providing a similar response to Chairman Percy.

As you requested, I am enclosing herewith the text of the instructions issued by the Joint Chiefs of Staff governing all U.S. military personnel in El Salvador.

At the present time the Salvadoran armed forces are conducting several military medium-sized operations in the northern and eastern parts of the country. The most recent operations have not encountered any large pockets of resistance. The Salvadoran Government claims 150 government soldiers killed in the last 2 months and perhaps as many as 1,000 or more of the insurgents.

The insurgents do not permanently occupy any area of the country and they are engaging in hit-and-run attacks, targeting utility power stations, bridges, and crop storage areas. They are attempting to sabotage the economy to the extent possible, although they are still employing terrorism against both the rural and urban populations. They are occupying villages temporarily and executing persons who support the government.

To date there have been no incidents involving our military personnel in any way with government operations against the leftist insurgents. I am enclosing a description of the activities of the U.S. military personnel assigned to El Salvador connected with the assistance and training programs.

With respect to the Arms Export Control Act, the conflict in El Salvador predates the enactment of section 21(c)(2) and no report has been filed under that section. Nevertheless, the information contained in the letter to you from Deputy Secretary of Defense Carlucci dated March 13, and the information contained in this letter and its enclosures are intended to provide all of the same data that would be required under section 21(c)(2) if there were a new "outbreak of significant hostilities." Moreover, the functions being performed by U.S. personnel in El Salvador fall clearly within the range of permissible activities under section 21(c)(1), as set out in the reports of the Committee on Foreign Affairs and the Committee of Conference on the International Security and Development Cooperation Act of 1980.

(51)

With respect to the War Powers Resolution, we have reminded our Embassy in San Salvador of the Resolution's requirements for consultation with and reports to Congress in the event that U.S. military personnel are introduced into hostilities or a situation where imminent involvement in hostilities is clearly indicated by the circumstances. We have instructed the Embassy to keep the security situation of U.S. military personnel in El Salvador under systematic review, and to report immediately any developments which suggest any significant increase in the risk to them. This is intended to assure that the requirements of the War Powers Resolution will be complied with in a timely manner should they become applicable. In addition, the Embassy has assured that all U.S. personnel in El Salvador have been briefed on security procedures intended to avoid involvement in hostilities or situations of imminent hostilities, and that these procedures will be strictly enforced.

We will continue to keep the Committee informed through periodic reports which we will begin providing shortly in accordance with your request, and will remain vigilant in observing all legal requirements. Under present circumstances, we believe monthly reports would be appropriate, but will review the frequency if conditions change. The first report covering through the end of March should be available soon.

Sincerely,

RICHARD FAIRBANKS,
*Assistant Secretary
for Congressional Relations.*

Enclosures:

1. Instructions Governing U.S. Military Personnel.¹
2. Description of Duties of U.S. Military Personnel.

**AUTHORIZED U.S. MILITARY SECURITY ASSISTANCE PERSONNEL—
EL SALVADOR**

Military Mission (MILGP).—There are 11 U.S. military personnel presently authorized for the MILGP in El Salvador. These consist of a permanent staff of six officers and enlisted men and a five-man administrative MTT which is assisting the MILGP to handle its heavy administrative workload. (There is an additional officer on duty in a temporary overlap status). MILGP provides the executive direction and administrative support for the security assistance program in El Salvador.

Operation Planning and Assistance Teams (OPAT).—These two five-man teams have been deployed. One works with the High Command in San Salvador to improve Salvadoran logistics, command and control, and communications procedures. The second OPAT is providing the same kind of assistance to the regional military commands.

Helicopter Pilot Training Maintenance Team.—This team of 14 is assisting the Salvadoran armed forces in San Salvador to establish a pilot training program and a maintenance and logistic program in support of the U.S.-supplied helicopters.

¹ Enclosure 1 is classified and therefore is retained in committee files.

Naval MTT.—This six-man team assists the Salvadoran Navy at La Union in determining materiel requirements needed to upgrade its fleet of coastal patrol craft and provide instruction in interdiction at sea.

Small Unit Training Team.—These three five-man training teams will provide instruction in the use of U.S.-supplied materiel and in operations and communications. One team will be deployed to the National Training Center in southern El Salvador by April 1. The other two have been assigned to the newly formed quick reaction battalion near Santa Ana. Eleven of the personnel are in country with the remaining four scheduled to arrive by the end of March.

**Letter of May 8, 1981, to Hon. Clement J. Zablocki, Chairman,
Committee on Foreign Affairs, From Hon. Richard Fairbanks,
Assistant Secretary of State for Congressional Relations**

DEPARTMENT OF STATE,
Washington, D.C., May 8, 1981.

HON. CLEMENT J. ZABLOCKI,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: In accordance with my letter of April 6, I am pleased to provide the first monthly report on the situation affecting U.S. military personnel in El Salvador. This report covers information and activities through the end of April. I am providing a similar report to Chairman Percy.

U.S. MILITARY PERSONNEL

During the month of April, U.S. military security assistance staffing in El Salvador remained at the same level and composition as that given in the enclosure to my letter of April 6. (This refers only to military personnel administering our security assistance program, and does not include U.S. military personnel assigned to the Defense Attaché's office, the Marine Guard detachment, or the OAS Honduras/El Salvador observer mission.)

The helicopter pilot training and logistics teams continued their work with Salvadoran helicopter personnel, and the 5-man operations planning assistance augmentation team (OPAT) visited the regional commands, assisting them in logistics and command and control planning. The three 5-man small unit training (SUT) teams were deployed as planned, two to the newly formed quick reaction battalion near Santa Ana and one to the National Training Center in southern El Salvador. We authorized the extension to mid-May of four of the six personnel of the Naval MTT which had been scheduled to complete work by May 1. The other two members departed May 1. The extension was required because of the late arrival of certain technical equipment needed for repair work on the Salvadoran patrol vessels.

The only security incident involving U.S. military security assistance personnel occurred on April 1 after two helicopters landed at the eastern provincial capital of San Vicente. Eight U.S. military personnel on a visit to the San Vicente regional command had been on board (five members of the OPAT augmentation team and three members of the OPAT team working with the High Command). When one of the helicopters took off after unloading its passengers, it came under light, small arms fire from a considerable range. No hostile fire was directed against the U.S. military personnel, who remained under cover and did not use their sidearms. The Salvadoran security forces returned fire and cleared the area. The visit proceeded

without further incident. There were no casualties to U.S. or Salvadoran personnel nor any damage to the helicopter during the brief encounter. There is no evidence that the U.S. personnel were targeted for attack in this instance or that the helicopters were subject to a prearranged ambush.

GENERAL SECURITY SITUATION

In recent months the American presence in El Salvador has become subject to increasing terrorist and propaganda activity. The vulnerability of our Embassy to rocket attacks is especially serious. On March 25, extensive damage was caused to the third floor, which was damaged in an almost identical attack in September 1980. The attack occurred in the afternoon when injury or death could have easily occurred. This and other assaults have been accompanied by high-powered rifle fire. Rifle fire and/or handgun attacks took place on March 4, March 7, and March 17. On April 3 and April 6 attacks were made against the Salvadoran security forces assigned to protect the Embassy. While there have been no casualties from these attacks, the continuing threat to the American presence in El Salvador requires the constant practice of the most prudent security precautions.

Guerrilla operations are continuing on a hit-and-run basis in several parts of the country with carefully selected attacks against strategic economic targets and military outposts. The most serious situation for the government is in northern Morazan department where at least 1,000 guerrillas have been concentrated. The Salvadoran armed forces have had difficulty dislodging the guerrillas from their positions in this area. U.S. personnel are not located in Morazan and their security is not affected by the situation there at this time.

I trust that the foregoing information will be helpful to the Committee.

Sincerely,

RICHARD FAIRBANKS,
Assistant Secretary
for Congressional Relations.