The original documents are located in Box 65, folder "War Powers Resolution Legislative History (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Jane:

These are copies of some information Mr. Hills asked from a meeting that was held in Mr. Buchen's office on Friday at 11:15 a.m.

I didn't really know what to do with them.

Jackie

TEXTS OF LEGISLATIVE PROHIBITIONS AGAINST REINTRODUCTION OF U.S. MILITARY FORCES INTO INDOCHINA

Second Supplemental Appropriation Act of 1973 (PL 93-50) July 1, 1973

SEC. 307. None of the funds herein appropriated under this Act may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam and South Vietnam or off the shores of Cambodia, Laos, North Vietnam and South Vietnam by United States forces, and after August 15, 1973, no other funds heretofore appropriated under any other Act may be expended for such purpose.

Continuing Resolution for FY 1974 (PL 93-52, as extended by PL 93-118 and 93-124) July 1, 1973

SEC. 108. Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.

State Department Authorization Act for FY 1974 (PL 93-126) (Case-Church Amendment) Oct 16, 1973

SEC. 13. Notwithstanding any other provision of law, on or after August 15, 1973, no funds heretofore or hereafter appropriated may be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress.

Military Procurement Authorization Act (PL-~~93~~ 93-155) (Nov. 16, 1973)

§1107 Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter, by the Congress.

[redacted] - 93-189

Foreign [redacted] Assistance Act Dec 17, 1973

§29 No funds authorized or appropriated under this or any other law may be expended to finance military or paramilitary operations by the United States in or over Vietnam, Laos, or Cambodia.

Also — §839 of PL 93-437 (DoD Appropriation FY75) "Combat activities"

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Special FAA of 1971

(2) by striking out the period at the end thereof and inserting the following: ": *Provided*, That, in addition to any other sums available for such purpose, $15,000,000 of the amount authorized for the fiscal year 1971 may be used only for the purpose of relief, rehabilitation, and reconstruction assistance for the benefit of cyclone, tidal wave, and flood victims in East Pakistan.".

84 STAT. 1942
84 STAT. 1943

Foreign currencies, Pakistan.

(b) Excess foreign currencies held in Pakistan not allocated on the date of enactment of this section are authorized to be appropriated for a period of one year from such date of enactment to help Pakistan withstand the disaster which has occurred.

U.S. troops in Cambodia, restriction on funds.

SEC. 7. (a) In line with the expressed intention of the President of the United States, none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

(b) Military and economic assistance provided by the United States to Cambodia and authorized or appropriated pursuant to this or any other Act shall not be construed as a commitment by the United States to Cambodia for its defense.

75 Stat. 424; 82 Stat. 966. 22 USC 2151-2410.

SEC. 8. The Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

Additional assistance, Cambodia. 22 USC 2318, 2360, 2364.

"SEC. 652. LIMITATION UPON ADDITIONAL ASSISTANCE TO CAMBODIA.—The President shall not exercise any special authority granted to him under sections 506(a), 610(a), and 614(a) of this Act for the purpose of providing additional assistance to Cambodia, unless the President, at least thirty days prior to the date he intends to exercise any such authority on behalf of Cambodia (or ten days prior to such date if the President certifies in writing that an emergency exists requiring immediate assistance to Cambodia), notifies the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate in writing of each such intended exercise, the section of this Act under which such authority is to be exercised, and the justification for, and the extent of, the exercise of such authority.".

Notification to Congress.

Approved January 5, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1678 (Comm. on Foreign Affairs) and No. 91-1791 (Comm. of Conference).
SENATE REPORT No. 91-1437 (Comm. on Foreign Relations).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Dec. 9, considered and passed House.
Dec. 15, 16, considered and passed Senate, amended.
Dec. 22, House and Senate agreed to conference report.

GPO 48-139

Special FAA of 1971

84 STAT. 1942
84 STAT. 1943

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Foreign currencies, Pakistan.

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military, paramilitary, police & other security or intelligence forces

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(amended by § 408 of 1971 FAA)

Approved January 5, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1678 (Comm. on Foreign Affairs) and No. 91-1791 (Comm. of Conference).
SENATE REPORT No. 91-1437 (Comm. on Foreign Relations).
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Special FAA of 1971

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Approved January 5, 1971.

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CONGRESSIONAL RECORD, Vol. 116 (1970):
Dec. 9, considered and passed House.
Dec. 15, 16, considered and passed Senate, amended.
Dec. 22, House and Senate agreed to conference report.

GPO 48-139

cooper-church

Public Law 91-652
91st Congress, H. R. 19911
January 5, 1971

An Act

To provide additional foreign assistance authorizations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Foreign Assistance Act of 1971". Special Foreign Assistance Act of 1971.

SEC. 2. There are authorized to be appropriated to the President for the fiscal year 1971 not to exceed—

(1) $85,000,000 for additional military assistance and $70,000,000 for special economic assistance for Cambodia;

(2) $100,000,000 for economic and military assistance programs to replace funds which were transferred by the President for use in Cambodia;

(3) $150,000,000 for additional military assistance for the Republic of Korea;

(4) $30,000,000 for additional military assistance for Jordan;

(5) $3,000,000 for additional military assistance for Indonesia and $10,000,000 to replace funds transferred from other programs for use in Indonesia;

(6) $5,000,000 for additional military assistance for Lebanon;

(7) $65,000,000 for additional supporting assistance for Vietnam; and

(8) $17,000,000 for additional general military assistance to compensate for a shortage in anticipated recovery of funds from past years' programs.

SEC. 3. The President is authorized, until June 30, 1972, to transfer to the Republic of Korea such defense articles located in Korea and belonging to the Armed Forces of the United States on July 1, 1970, as he may determine, except that no funds heretofore or hereafter appropriated under this Act or the Foreign Assistance Act of 1961 shall be available for reimbursement to any agency of the United States Government for any transfer made pursuant to this section. Defense articles, transfer to Korea.

SEC. 4. Except as otherwise provided in this Act, any assistance furnished out of funds appropriated under section 2 of this Act and any transfer made under section 3 of this Act shall be furnished or transferred, as the case may be, in accordance with all of the purposes and limitations applicable by statute to that type of assistance or transfer under the Foreign Assistance Act of 1961 (including the provisions of section 652 of such Act, as added by section 8 of this Act). 75 Stat. 424. 22 USC 2151 note.

SEC. 5. Section 402 of the Foreign Assistance Act of 1961 (22 U.S.C. 2242) is amended by adding at the end thereof the following new sentence: "None of the funds authorized by this section shall be made available to the Government of Vietnam unless, beginning in January 1971, and quarterly thereafter, the President of the United States shall determine that the accommodation rate of exchange between said Government and the United States is fair to both countries.". Vietnam. 80 Stat. 801. 83 Stat. 819.

SEC. 6. (a) Section 451(a) of the Foreign Assistance Act of 1961, relating to the contingency fund, is amended— 75 Stat. 434; 83 Stat. 819. 22 USC 2261.

(1) by striking out "for the fiscal year 1971 not to exceed $15,000,000" and inserting in lieu thereof "for the fiscal year 1971 not to exceed $30,000,000"; and

HOUSE OF REPRESENTATIVES—*Wednesday, July 18, 1973*

The House met at 12 o'clock noon.

Rev. John H. Craven, chaplain, U.S. Navy, offered the following prayer:

To You alone, Lord, to You alone, and not to us, must glory be given, because of Your constant love and faithfulness.—Psalms 115: 1.

Uncrowd our hearts, O God, until silence speaks in Thy still small voice; turn us from the hearing of words, and the making of words, and the confusion of much speaking that we may possess ourselves for this brief moment, undistracted, and hear Your sure word of wisdom. O God, amid the perplexities and doubts which torment and divide us, open a plain path wherein we may walk with assurance and faith. Keep us compassionate of heart and strong in courage as we serve our fellow citizens of these United States to the honor and glory of Your holy name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 6676. An act to continue until July 1, 1976, the existing suspension of duty on manganese ore; and

H.R. 6717. An act to amend section 210 of the Flood Control Act of 1968.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1423) entitled "An act to amend the Labor Management Relations Act, 1947, to permit employer contributions to jointly administered trust funds established by labor organizations to defray costs of legal services."

PRESIDENTIAL WIRETAPPING

(Mr. WALDIE asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. WALDIE. Mr. Speaker, I am certain I share the concern that many share with the revelation yesterday that the President had secretly wired the White House for sound, and that all visitors to the President and all telephone conversations with the President, unbeknownst to the visitors or those who were talking to the President on the telephone, were being recorded.

My objections to that odious practice of clandestine electronic surveillance are well known and of long standing.

But, Mr. Speaker, what disturbs me most about this sordid tale is not only the practice by and of itself, but what it demonstrates must be the emotional condition of the President. A President who apparently is plagued with unreasonable fear and distrust and suspicions of his fellow Americans is a most insecure individual, and does not possess the stability of character upon which decisions can be fairly based and hopefully made for the good of this country.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair would like to make an announcement.

The Chair has again been advised that the electronic voting system is at the present time not operating. Until further notice, therefore, all votes and quorum calls will be taken by the standby procedures which are provided in the rules.

CALL OF THE HOUSE

Mr. CONABLE. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 348]

Ashley	Dickinson	Landgrebe
Bergland	Downing	McEwen
Blackburn	Fisher	Mills
Blatnik	Foley	Murphy, N.Y.
Brasco	Froehlich	Pritchard
Burke, Calif.	Gibbons	Reid
Chamberlain	Gray	Rooney, N.Y.
Clark	Gubser	Sandman
Collins, Ill.	Hébert	Talcott
Danielson	Hicks	
Davis, Ga.	Kemp	

The SPEAKER. On this rollcall 402 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

WAR POWERS OF CONGRESS AND THE PRESIDENT

Mr. ZABLOCKI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President.

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the joint resolution, House Joint Resolution 542, with Mrs. GRIFFITHS in the chair.

The Clerk read the title of the joint resolution.

The CHAIRMAN. When the Committee rose on Monday, June 25, 1973, the Clerk had read through section 1 ending on page 1, line 5, of the joint resolution.

Mr. ZABLOCKI. Madam Chairman, I move to strike requisite number of words.

Madam Chairman, I rise to remind our colleagues that this is a historic day in Congress.

The decisions we are about to make on the exercise of the war powers may have importance for our Nation long after we are gone.

It is my hope that as many Members as possible will stay on the floor to listen to the debate and to participate as they see the need.

Our consideration of this legislation—House Joint Resolution 542—the war powers resolution of 1973—has been somewhat unusual.

The House engaged in 3 hours of debate on the resolution more than 3 weeks ago—on June 25.

Reading of the measure for amendment under the 5-minute rule was, however, postponed until today because of the press of appropriations bills and other business.

I believe that this delay has served an importan purpose.

It has permitted the Members of this body to give careful consideration to the war powers resolution of 1973, as well as to various alternatives which have been proposed.

From my own experience in working on war powers legislation during the past 3 years, I know that proposals that often look attractive at first blush, often grow pale—and undesirable—upon more careful scrutiny.

The resolution which has been reported by the Committee on Foreign Affairs stands up under scrutiny. It represents the work and best thinking of a number of Members of this body.

It is the result of more than two dozen days of hearings with testimony of many experts over a period of three Congresses.

It is the result of four arduous markup sessions in subcommittee and three more sessions in the full Committee on Foreign Affairs.

No claim is made for perfection in this legislation. At the same time, I believe that it offers a good, sensible solution to the problem of restoring the constitutionally mandated balance between Congress and the President in the area of war powers.

Therefore, I have been concerned about allegations which have been made to the effect that House Joint Resolution 542 is flawed because it would permit Congress, through inaction, to make major policy decisions.

Such an interpretation does the resolution an injustice.

The bill must be read and considered in its entirety—not simply through a narrow reading of one provision—subsection 4(b).

That provision would require that any commitment of American troops into combat by the President would be automatically terminated if Congress failed to give its positive approval within 120 days after such a commitment had been reported.

In its totality, however, inaction is a concept alien to this resolution.

If the resolution is approved, Congress would be given a much more active role in consulting with the President on important issues involving the commitment of American Armed Forces.

The Congress would be actively involved in receiving a complete and factual report from the President when he found it necessary to take certain steps delineated in the resolution.

Moreover, under the resolution's priority provisions the Congress would be actively involved in considering legislation either approving or disapproving the President's action virtually from the moment such legislation would be introduced.

It takes only 1 Member out of 535 Members of the House or Senate to trigger the mechanism that requires that both bodies eventually are called upon to take an "up or down" vote.

It may be "up or down" on a resolution of approval. It may be "up or down" on a resolution of disapproval. In the case of the latter, a disapproval would be subject to a veto. Such a development would give one-third of either house the opportunity to continue the commitment of troops. The will of the majority would be thwarted. I submit therefore the 120-day termination is a necessary, vital and key provision of the resolution.

But there will be action.

Congress will be making major policy decisions because it will vote major policy decisions.

Therefore, I once again recommend that this body here and now make a stand for its constitutional rights and authorities under the Constitution by passing this war powers resolution of 1973 as reported from the Committee on Foreign Affairs.

Mr. FRELINGHUYSEN. Madam Chairman, I move to strike the necessary number of words.

Madam Chairman, we have just heard the gentleman from Wisconsin say that the lapse of over 3 weeks since debate on this resolution has given the membership time to give sober second thought to its detailed provisions. I hope they have done so, but I would like to suggest that the lapse of time is unfortunate because no matter what the interest may be, there has been a considerable passage of time to dim what has been said for and against this proposal. To suggest that the passage of time means that the provisions of this bill stand up surely does not stand up as a proposition itself.

The gentleman from Wisconsin has said that some see section 4(b) as a fatal flaw in the resolution. I am one of those who do so. It is quite obvious, no matter how we read it, and whether we read it narrowly or broadly, it seeks to capitalize on the possibility that Congress may take no action. It is that which I think is most undesirable. If the point of the whole operation of providing 120 days is to goad Congress into action it seems to me the necessity should be on us to decide whether we are for or against what the President has done with respect to committing troops. And yet the fact is that even though a process is proposed for enabling us to consider what to do, there is no assurance that anything will take place at all, either for or against the commitment.

I do think that this is a fatal flaw. To suggest that this is a necessary and vital provision if the will of Congress is to be asserted, is simply not to look at what the language proposes. The language envisages a change of national policies if the will of the Congress is not expressed at all. If we do not take a position for or against what the President is doing, there is going to be a change in national policy.

Therefore, my strong criticism of this provision is that it emphasizes what has been altogether too characteristic of Congress in the past. That is, we have not felt it necessary to assert ourselves.

So, I would suggest that what the gentleman from Wisconsin stresses as a core of the resolution is its fatal weakness. I hope we either drop that provision entirely, or at least modify it in such a way that positive action is required by Congress, either to support the President or to decide that he was unwise in committing troops.

I might say that we have had war powers legislation considered in the past on several occasions, but we have not approved language like this. It is my fundamental feeling that what we need is what we supported in the past, that is, full and adequate information from the President as to the nature of the crisis that leads to a commitment of troops. That information should key what reaction we should make.

We should not get involved in whether or not we have 30 days to act, whether or not we have 90 days to act, or whether or not we have 120 days to act. We should be aware of the fact that something of importance is going on as soon as troops are committed. Presumably we should be aware of a crisis before the commitment to commit troops is made, and we should act positively and not simply allow indecision to result in a drastic shift in national policy.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Madam Chairman, will the gentleman agree that the warmaking powers of this Nation reside in the Congress?

Mr. FRELINGHUYSEN. Madam Chairman, the powers do in part, as the gentleman knows. I am not sure what the question involves, but the Constitution gives some of the warmaking powers to the President and some to Congress.

I am not saying we should not assert ourselves. It is because we have not asserted ourselves that there is any justification for this kind of proposal. What I am saying is that there is not a definition of the division of responsibility. The attempt to make a definition such as is proposed by this resolution is moving us in the wrong direction. It is underlining the practical recognition on the part of Congress that we are not likely to move. We actually count on the fact that there must be some change if we do not move.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DENNIS

Mr. DENNIS. Madam Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. DENNIS: Strike out all after the resolving clause and insert in lieu thereof the following:

SECTION 1. In the absence of a declaration of war by the Congress or of a military attack upon the United States, its territories or possessions, the Armed Forces of the United States shall not be committed to combat or introduced into a situation where combat is imminent or likely at any place outside of the United States, its territories and possessions, without prior notice to and specific prior authorization by the Congress, except in case of emergency or necessity, that existence of which emergency or necessity is to be determined by the President of the United States.

SEC. 2. Whenever, in the absence of a declaration of war by the Congress or of a military attack upon the United States, its territories or possessions, the President of the United States nevertheless determines that an emergency or necessity exists which justifies such action, and shall, by consequence, commit the Armed Forces of the United States to combat or shall introduce them into a situation where combat is imminent or likely at any place outside of the United States, its territories or possessions, without prior notice to and authorization by the Congress, as is provided and authorized in such cases under and pursuant to the provisions of section 1 of this Act, the President shall report such action to the Congress in writing, as expeditiously as possible and, in all events, within twenty-four hours from and after the taking of such action. Such report shall contain a full account of the circumstances under which such action was taken and shall set forth the facts and circumstances relied upon by the President as authorizing and justifying the same. In the event the Congress is not in session the President shall forthwith convene the Congress in an extraordinary session and shall make such report to the Congress as expeditiously as possible, and, in all events, within forty-eight hours from and after the taking of such action.

SEC. 3. Not later than ninety days after the receipt of the report of the President provided for in section 2 of this Act, the Congress, 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 and require the discontinuance of the same.

SEC. 4. If the Congress, acting pursuant to and under the provisions of section 3, shall approve, ratify, and confirm and shall authorize the continuation of the action taken by the President and so reported to the Congress, the President shall thereafter report periodically in writing to the Congress at intervals of not more than six months as to the progress of any hostilities involved and as to the status of the situation, and

the Congress shall, within a period of thirty days from and after the receipt of each such six-month report, again take action by the enactment of an appropriate bill or resolution, to either ratify, approve, confirm, and authorize the continuation of the action of the President, including any hostilities which may be involved, or to disapprove and require the discontinuance of the same.

SEC. 5. If the Congress shall at any time, acting under the provisions of section 3 or section 4, disapprove the action of the President and require the discontinuance of the same, then the President shall discontinue the action so taken by him and so reported to the Congress, and shall terminate any hostilities which may be in progress and shall withdraw, disengage, and redeploy the Armed Forces of the United States which may be involved, just as expeditiously as may be possible having regard to, and consistent with, the safety of the Armed Forces of the United States, the necessary defense and protection of the United States, its territories and possesions, the safety of citizens and nationals of the United States who may be involved, and the reasonable safety and necessities, after due and reasonable notice of allied or friendly nationals and troops.

SEC. 6. For the purposes of this Act the Panama Canal Zone shall be taken and deemed to be a territory or possession of the United States.

SEC. 7. Nothing contained in this Act shall alter or abrogate any obligation imposed on the United States by the provisions of any treaty to which the United States is presently a party.

SEC. 8. If any provision of this Act or the application thereof to any particular circumstance or situation is held invalid, the remainder of this Act, or the application of such provision to any other circumstance or situation, shall not be affected thereby.

SEC. 9. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act.

The CHAIRMAN. The gentleman from Indiana is recognized for 5 minutes in support of his substitute amendment.

(By unanimous consent, Mr. DENNIS was allowed to proceed for 5 additional minutes.)

Mr. FINDLEY. Madam Chairman, will the gentleman yield for a question?

Mr. DENNIS. I would rather make my statement first.

Mr. FINDLEY. We do not have copies of the amendment.

Mr. DENNIS. Yes, we do. There are copies at the desk.

Madam Chairman, this is a very serious and fundamental matter which we are considering here today, and it is for that reason, after giving the matter considerable study over a period of more than a year, I have ventured to try to offer a substitute amendment. I have done so in full recognition of the fact that the members of the distinguished committee, on which I do not have the honor to serve, and on both sides of the aisle have labored long and hard on this matter. I feel, however, that the matter is of such an extraordinarily serious nature that any Member of this House who feels he can contribute usefully to the debate ought to do so, acknowledging as he does his debt to all the members of this distinguished committee and to the other people who have worked on the proposition.

Madam Chairman, rising as I do to offer a substitute to the work of the committee, I feel strongly that it is incumbent upon me to state, as clearly as I am able to state it, what my bill contains and to point out as clearly as I can the differences between my substitute and the provisions in the committee bill and the reasons why I think the substitute is a better measure.

Now, what my substitute does is this:

First, it recognizes specifically and in so many words that ordinarily the President of the United States should not commit troops to combat or to combat situations abroad in the absence of a declaration of war or an attack upon this country without prior authorization by the Congress.

And, of course, prior authorization necessarily imports prior consultation.

The bill has no application if there is an attack upon this country. It has no application if there is a declaration of war. That removes a great many of the constitutional questions which arise under some of the other war power bills.

Now, the next thing my measure says is that while ordinarily the President must have prior authorization to commit troops to combat abroad, I recognize that emergency situations may arise where that is not possible. I do not attempt, as the Javits bill does in the other body, to define what those emergency situations may be or to say that only in those cases may the President act without prior authority, because I do not think we are intelligent enough to sit here and foresee all the possible circumstances which may arise.

We know now that he sometimes has acted without prior authority and has come back to us later. My bill concedes to the President the right to act in a case of emergency if he sees fit. It leaves that up to him, which is, in fact, the situation today. But the next thing my substitute does is to provide for something we do not have today, and that is a requirement that if the President so acts, he must immediately make a written report to the Congress of the United States of what he has done, why he has done it, and the basis upon which he has acted.

Then the Congress within a maximum of 90 days must act. We can do it as soon as we want to, but within a period of not over 90 days, we must act to vote by bill or resolution appropriate to the purpose either approving of the Presidential action or disapproving.

Madam Chairman, that is one of the big differences between the substitute and the committee bill. The substitute requires a vote within 90 days. We have an inescapable duty to do that. We must vote it up, vote approval of the action taken by the President, or we must vote it down. One or the other we must do. So the policy will be determined as it should be, in my judgment, by action taken by this body and not, as the gentleman from New Jersey has pointed out, something which can eventuate, as under the committee bill, by mere inaction on our part.

There is another feature in my measure which is lacking in the committee bill and which I think is important. That provides for continuing congressional participation, because it is required that if hostilities are going on or action is taking place and we have approved it the President must make periodic reports to the Congress as to the status of the situation, at intervals not to exceed six months, although he can make them oftener. Every time he makes such a report, within 30 days thereafter we are again required to vote approval or disapproval. We must act within 30 days on these subsequent occasions.

If and when we ever adopt a measure here in the Congress, whether a bill or a resolution appropriate to the purpose, disapproving what the President has done, then he must terminate hostilities and withdraw troops and break off action as soon as it can be expeditiously and reasonably done. That also is a requirement of law written into the statute.

Those are the chief provisions of the substitute.

Further provisions provide that we do not purport to affect whatever treaty obligations may now exist, but which I do not try to define, and we do not apply the bill to any combat which might be in progress and already going on, such as a war, for instance, when enacted, but it is only for the future.

I point out what I am trying definitely to do is this: I think the successful conduct of war in this country requires the cooperation of the Executive and the Congress. I am trying to suggest a long-range measure which will not hamstring the Executive and will not tie his hands and will not deny him flexibility but will still assure us of congressional participation and continuing participation.

I submit it is a measure that we can live with and operate under.

Mr. BINGHAM. Will the gentleman yield?

Mr. DENNIS. I am happy to yield to the gentleman from New York.

Mr. BINGHAM. I thank the gentleman for yielding.

I would like to have a clarification of one point. The gentleman says action by the Congress disapproving of Presidential hostilities would be by bill or resolution appropriate to the purpose. Does the gentleman mean by that a concurrent resolution?

Mr. DENNIS. I gladly address myself to that question because it is another difference between the committee bill, which, as the gentleman knows, says "concurrent resolution," and my substitute. I assume that is written into the committee bill on the theory that a concurrent resolution does not have to be referred to the Executive and therefore any possibility of a veto would be avoided.

I would say to the gentleman from New York that that is an undecided and very difficult and debatable constitutional question. One of my quarrels with the committee bill is that it locks that constitutional question into law, and there is no escape from it.

When I say bill or resolution appropriate to the purpose, I do not try to answer that unanswered question but I leave it up to the Congress which is confronted with that action at the time.

Generally it refers, as the gentleman

from New York knows, to the constitutional scheme——

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, at the request of Mr. BINGHAM, Mr. DENNIS was allowed to proceed for 2 additional minutes.)

Mr. DENNIS. I thank the gentleman.

Generally, as he knows, under our constitutional scheme legislative action or anything which is to have the force and effect of law does necessarily require both congressional action and presentation to the Executive and action on his part.

There is an argument made that in this particular field that scheme can be avoided by means of concurrent resolution. I have my doubts about that. I think if you use a concurrent resolution, which is to be binding law, which we do not usually use it for, that under article I, section 7, it has to be presented to the President, anyway.

But if that is not true you can still use a concurrent resolution under this substitute because I say a resolution appropriate to the purpose. If the Congress decides on a concurrent resolution, that that is the appropriate way to go at that time, they can go that way. If they are wrong, and the courts say they are wrong, which could happen, they can still use the joint resolution or bill, but under the committee bill they are stuck under those circumstances.

Mr. BINGHAM. In other words, the gentleman from Indiana is really deferring one of the essential considerations here, which is whether we should proceed in this situation by concurrent resolution or joint resolution. The gentleman from Indiana prefers to defer that until this arises, with all the problems that would be concurrent at the moment, rather than trying to decide it now?

Mr. DENNIS. I would say to my friend, the gentleman from New York, that the courts will have to decide this ultimately because it is an undecided and a very difficult question. I think it is wiser to leave it flexible and give the Congress, which is faced with the issue, the option, rather than to buy a lawsuit in the bill we are writing, which is already going to be complicated enough.

Mr. ECKHARDT. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Texas.

Mr. ECKHARDT. Madam Chairman, I think the remarks of the gentleman from Indiana are extremely well taken with respect to concurrent resolutions, because in the bill it says the initial ACTION of passing the bill, which apparently gives certain additional authority to the President for a temporary making of war, is done by an act. It seems to me it is very strongly arguable that any change in that authority or any rescission of that authority must be done in the same way.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

(On request of Mr. YATES, and by unanimous consent, Mr. DENNIS was allowed to proceed for 2 additional minutes.)

Mr. DENNIS. I thank the gentleman from Illinois for yielding me the additional time.

Mr. YATES. I did so so the gentleman from Indiana might respond to the inquiry posed by the gentleman from Texas (Mr. ECKHARDT).

Mr. DENNIS. I was merely going to say to the gentleman from Texas that I agree with the gentleman. And also add the fact that it seems to me that whatever the legal situation may be, that a veto of such a resolution or bill, or whatever it is, in that situation, after the Congress has voted down the war by both Houses, would be a very unlikely thing as a practical matter. And if it ever did happen that would be the time to start talking about the cutting off of funds and other actions of that sort.

Mr. BIESTER. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Pennsylvania.

Mr. BIESTER. Madam Chairman, I thank the gentleman for yielding to me.

I would ask the gentleman from Indiana does the substitute contain language that would provide for expediting the consideration of a bill or appropriate bill?

Mr. DENNIS. Well, I have not attempted to do that except by saying that we must vote within 90 days when the war is first reported, and within 30 days in the case of subsequent reports. I presume that, faced with that legal deadline we would address it by whatever means they decide to use in respect to amendment of the rules.

Mr. BIESTER. Madam Chairman, if the gentleman will yield still further, am I correct, then, that the provisions of section 6 of the substitute provide that in the event the Congress takes no action, I presume the Presidential action would take effect in the event a majority of the Congress voted for some action like an appropriate resolution, or bill, and this was vetoed by the President and we failed to muster a two-thirds majority to override the veto.

Mr. DENNIS. As a matter of fact, section 6 as written in the original bill is not in the substitute that I offered, but it was obvious in terms of what would occur. We have to vote it down, but if we do not vote it down it is still in effect.

Mr. BIESTER. But if this veto of an appropriate resolution or bill is made, then unless two-thirds of a majority of the Congress vote to override that veto, the President's war may continue.

Mr. DENNIS. That is assuming, I may say to the gentleman from Pennsylvania, that again it would be vetoed, and we get back to the same argument we had a minute or two ago, but if there was a veto one cannot avoid it in any case.

Mr. MAILLIARD. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I should like to ask a couple of questions of the gentleman from Indiana.

There are two things I would say to the gentleman from Indiana about his substitute that give me some worry. One of them has already been raised, and that is that there is no procedure by which a resolution would be expeditiously brought to action. I do not anticipate any problem, frankly, under the rules of the House, but I am a little concerned about the rules of the other body where such a resolution could be filibustered if a few of the Members of the other body were of a mind to do so. I do not know, without making some such provision, how we can guard against this.

Mr. DENNIS. I would say to the distinguished gentleman from California, the ranking minority member of the committee, that I would have no serious objection to writing such provisions in the bill, although it makes a rather clumsy vehicle when we attempt it. But I must assume, and I do assume, that if and when we pass a measure which says it is the law that we must act within a certain length of time, that not only will this body do it but even the other body will arrange to do this.

Mr. MAILLIARD. I do not totally share the gentleman's confidence in the other body's changing its rules, which I think would be necessary.

Mr. DENNIS. I assume that rules would be adopted to carry out the mandate of the statute.

Mr. MAILLIARD. Let me ask the gentleman one additional question, if I may. The gentleman is a distinguished member of the bar, which I am not. Does he really believe that in section 2 at the end of the last sentence, which says: "The President shall forthwith convene the Congress in an extraodinary session" that the Congress has the power under the Constitution to tell the President when and under what circumstances he shall exercise powers that are granted to him by the Constitution?

Mr. DENNIS. I confess that the gentleman has raised a question I had not really thought about, but again I would say that if we pass a law that says the President shall not under certain circumstances, my opinion the President of the United States will obey the statute as we passed it.

Mr. MAILLIARD. He might comply, but I seriously doubt that we have this right. The same provision was in the original bill considered by our subcommittee, and after considering it, we changed the language to say that the Speaker of the House and the President pro tem of the Senate should request the President to take this action, because we believe that was as far as we had constitutional power to go.

Mr. DENNIS. The gentleman may be correct. I have felt that it was a weakness of the committee bill that it not only said we would request but it provided that we would request an extraordinary session, as I read the bill, only if the President pro tem and the Speaker saw fit; so that under the committee bill if they do not think anything is going on, as far as I can see, they can just forget it. I think we ought to try to make the Congress act on this thing, if that is the situation.

Mr. MAILLIARD. I do not disagree with the gentleman on that point, but I think we can by statute compel action by our own leaders. I doubt, however, that we can compel the President to ex-

ercise a power that is granted solely to him by the Constitution.

Madam Chairman, let me just say I think that all of the Members know that there are several substitutes that are floating around the House Chamber today. I have tried to examine them all. Each of them, I think, has defects that we attempted to correct in committee consideration of the bill. As I have set forth in the report, and as I said during general debate several weeks ago, I agree with those who think that section 4(b), as in the present bill, is a fatal defect. I could visualize the situation very simply where the President might take certain action where all of the Members of the House, or at least a very substantial majority, might concur that the action was a proper action and be willing to support it. But 50 Members of the other body could prevent that body from acting—and, incidentally, the way the provision is written, they do not have to vote on the substance; they can just vote not to vote on it.

So we could have a situation where 50 out of 535 Members of this Congress could totally thwart the will of the President of the United States and the remainder of the Congress. That is why I think to have major policy changes occur by the inaction of the Congress is the fatal defect in the committee bill.

Mr. WOLFF. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, the gentleman mentioned in his remarks that the objective of this amendment was to insure we would wage successful war, so that we could get support for a successful war. I think what we are trying to do with this bill is to establish a method of maintaining the peace.

The gentleman talks as well about the flexibility, but what we are trying to do is eliminate some past flexibility. Really the amendment the gentleman talks about is arrogating power to the President he does not have today.

Mr. Jefferson, in a message to Congress in 1805, said:

> Considering that Congress alone is constitutionally invested with power of changing our condition from peace to war I have thought it my duty to await for their authority for using force in any degree which could be avoided.

Daniel Webster, as Secretary of State, said:

> I have to say that the war-making power in this Government rests entirely with the Congress.

I could go on quoting from our Founding Fathers.

Abraham Lincoln said:

> The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it, by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing oppression upon us.

John Marshall said:

> The whole powers of war being, by the Constitution, vested in Congress, the acts of that body alone can be resorted to as our guides in this inquiry—opinion in *The Amelia*, 1801.

James Buchanan said:

> The executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When this fails it can proceed no further. It cannot immediately resort to force without the direct authority of Congress, except in resisting and repelling hostile attacks.

What is involved here is lack of positive action by the Congress, is action itself. Since the warmaking power resides in the Congress and not in the President, the failure to declare war is an action of itself. It is an action of refusal to confirm an "extralegal" act that may be committed by a President which commits us to war, except in defense of this Nation.

Also, the full measure of this amendment is to provide reports. I do not think we need any more reports. I think we have had enough in the way of reports to the various committees. What we do need here is a return to the full authority that was intended by our Founding Fathers in the Constitution.

Madam Chairman, I urge my colleagues to defeat the amendment and support the committee bill.

Mr. BUCHANAN. Madam Chairman, I rise in strong support of the Dennis substitute and wish my colleague from Indiana as much success in its passage as he has already had in outflanking the members of the Foreign Affairs Committee, including the one in the well, in getting his amendment to the floor ahead of others which were to be offered.

I did submit certain amendments based on the Dennis bill to the committee and urged their adoption and failed. Some of these amendments based on the Dennis approach will also be offered in the Committee of the Whole House should the substitute fail, but I do not share with some of my colleagues either in their enthusiasm for the committee bill as it stands nor in their questions and criticisms concerning the Dennis substitute.

May I say in the first place that this is a stronger resolution, not a weaker resolution but a stronger resolution than the one which the committee has produced. The reason this is the case is simply first of all that it requires congressional action. It says to Congress the Constitution says we have the responsibility to declare war. The people expect us as the people's branch of Government to stand up and fulfill this constitutional responsibility and we are saying to the Congress as a matter of law that it must act to vote up or down. We cannot legislate by inaction. We cannot make major decisions by, as one Member so aptly described it, copping out altogether and doing nothing. This is stronger because it says to Congress we must act.

There is, however, a second respect in which it is a stronger resolution and this is very important. How did we get into trouble with the Gulf of Tonkin resolution and the situation which evolved into Indochina and Vietnam? It was not because there was no congressional action at the time. The Gulf of Tonkin resolution was adopted. It then formed the basis for a long, sustained and very extensive and very costly war on our part.

What the Dennis resolution says is not only must the President report to Congress when he takes emergency action, as the committee resolution would do, not only must the Congress vote up or down and take a stand and act on the question of whether the President has congressional approval or disapproval of this action, but also the Dennis resolution says the President must regularly report back to the Congress and the Congress must then approve or disapprove the continuation of that action.

This is stronger legislation, and it means a stronger and more responsive role on the part of the Congress.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, I thank the gentleman from Alabama for his remarks. I just want to take the time to express my appreciation for his support. The gentleman was a cosponsor of my substitute amendment when it was an independent bill, and I thank him.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Madam Chairman, what will happen in the event neither the House nor the Senate can agree upon a declaration of war? Would the war continue if the President got involved in a war?

Mr. BUCHANAN. Madam Chairman, let me answer the gentleman in this respect: The committee bill provides that by concurrent resolution the Congress may act to stop it.

Mr. WOLFF. Prior to the 120 days?

Mr. BUCHANAN. Prior, that is true.

The Dennis approach says, "By an appropriate resolution." Some of us have misgivings as to whether or not a concurrent resolution can be used to legislate in a substantive way. It never has been; perhaps it can be.

The distinguished gentleman from Delaware, a member of the committee, has pointed out that in the committee bill the Congress is delegating to the President a portion of its warmaking powers only under certain emergency conditions. The President can act, but the Congress retains the power by concurrent resolution to cut off that action. If this is true, then a concurrent resolution under the Dennis substitute at that time could do the same thing. We simply are not making a judgment on this constitutional question. If Congress wants to try a concurrent resolution, it can. Nor do we deal with the question of what happens if Congress does not obey the law. We are assuming that it will.

Mr. STRATTON. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Madam Chairman, I just want to say that I support the Dennis substitute. I think this is an improvement over the committee bill. I think it would be most unfortunate if

Congress were to take these basic decisions by inaction.

Madam Chairman, I would like to say that if the Dennis substitute fails, I have a much simpler way of accomplishing the same thing and will offer that amendment at the proper time.

Mr. DON H. CLAUSEN. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from California (Mr. DON H. CLAUSEN).

Mr. DON H. CLAUSEN. Madam Chairman, I rise in support of the Dennis amendment and to make some related remarks. I am extremely pleased we have before us this afternoon legislation to define in more specific and more easily understood terms the so-called warmaking powers of the Congress and of the executive branch.

In my judgment, there is no question that the Constitution charges both the President and the Congress with certain expressed duties and responsibilities with respect to committing this Nation to a "shooting war." However, over the years and particularly since the end of World War II, several implied powers have emerged whereby the President, as Commander in Chief, is empowered to invoke executive authority in dealing with possible nuclear confrontations and the outbreak of unconventional or guerrilla-type conflicts directed against traditionally pro-Western countries. And, thus it has been in this latter area of unconventional wars and U.S. involvement in them, that the scales have been tipped in favor of the Chief Executive, rather than the Congress, assuming responsibility for American involvement in hostilities abroad.

Major conflicts in Korea and Vietnam have focused attention on the compelling need to clarify and define warmaking authority both within the context of the Constitution and as it relates to the development of new guidelines for our future security to meet the threats posed by any future unconventional wars wherein there is a direct U.S. interest or involvement.

The experiences of the past decade have clearly revealed a serious gap in the ability and willingness of the traditional American political process to deal with this area of unconventional or guerrilla warfare. And, as we all know, our American society has become divided as never before in our history simply because we had no firm guidelines regarding the commitment of U.S. troops on foreign soil in situations where there was no precedent.

The warmaking powers, as they stand now, relate to a variety of situations, responsibilities and authorities. For example, our nuclear defense capability and the decision to respond quickly and decisively to a nuclear attack directed against the United States rests solely with the President. While we all hope and pray that this awesome responsibility and authority need never be exercised, it is generally recognized that the need for timely and decisive action demanded by a nuclear missile attack on our homeland can and should rest with the President and Commander in Chief. On the other hand, the decision as to whether or not to respond to an attack against the United States or U.S. citizens or property abroad by conventional warfare methods should and indeed must rest with the Congress. It was this type of warfare that was familiar to and fresh on the minds of our Founding Fathers and, thus, became the basis for warmaking authority conferred upon the Congress by the Constitution. But, what about unconventional warfare: The area that some are now calling the "twilight zone" or "gray area" of authority shared by the Congress and the President with respect to the warmaking power?

We, as a nation, have ignored this problem too long. While our definition and understanding of war has changed drastically during the 20th century, both the legislative and executive branches of our Federal Government have failed to recognize that the internal strength of this great country requires unity of purpose which can and indeed has been strongly influenced by our external policies and practices. Today, we belatedly and I must say somewhat reluctantly recognize that we must begin now to work toward establishing firm guidelines for our future security that the vast majority of our people will understand and accept.

However, in addition to building a domestic consensus for such guidelines between the public and their representatives as well as between the legislative and executive branches of Government, we must also look toward a restructuring of our international commitments, alliances, relationships and treaty organizations in order to delineate more clearly our individual and mutual responsibilities in coping with hostile situations abroad.

House Joint Resolution 542, the War Powers Act of 1973, is no doubt one of the most important and most controversial proposals in the field of foreign affairs ever considered during my years in the Congress. While we, as legislators, have debated it and sought either to improve or reject it, public support for this legislation has been increasing. Recently, I sent out a postal patron questionnaire to my constituents and, based on a tabulation of the first 5,000 returned, I find that 3,921 favor passage of this legislation, 891 are opposed, and 143 either had no opinion or were undecided.

One of the most common misconceptions about this legislation is perhaps the notion that its net effect will be to "tie the hands" of the Commander in Chief or our field commanders in responding to an emergency wherein there is a direct threat to American lives and property. Try as I may, I can find absolutely nothing in this resolution to give credence to such fears.

The single reservation I have with the legislation now before us, which I hope will be amended, is the thrust of section 4(b) whereby the President must forthwith end U.S. involvement in hostilities after the prescribed number of days if Congress fails to act. Legislation of this magnitude whereby we are attempting to reassert congressional authority in the field of warmaking, should not permit congressional inaction, in my judgment. In the war powers bill which I authored, Congress would, within the prescribed period of time, be required to vote either approval or disapproval and I firmly believe this positive provision should be included. Quite frankly, I consider it highly irresponsible and even dangerous for the Congress to seek to determine whether a course of action taken by the President should be continued or discontinued through its own inaction. The people want the Congress to take a stand on warmaking powers, eliminate "buck passing" and avoid legislating itself "cop-outs" which are all part of the problem we now face. What is needed is absolute and shared "accountability and responsibility" between Congress and the executive branch of Government.

Recognizing that war powers are, and legally must be shared between the elected legislative and executive branches in this country I consider this legislation a vital first step in improving the relationship between the President and Congress in establishing new guidelines for future security both for ourselves and for future generations of Americans.

What we are addressing ourselves to here today, is not the declaring of war, but a concept of strategy that will avoid the kind of overinvolvement such as occurred in Vietnam—a concept of restructured security alliances with newly and clearly defined parameters of responsibility, by all participants that can serve as a bulwark and deterrent against the "terrorist-type protracted warfare" now being employed throughout the world.

The Constitution provides that Congress shall have the power to—

make all laws which shall be necessary and proper for carrying into execution the foregoing powers [to declare war and to make rules for the government and regulation of the land and naval forces] vested by this Constitution in the Government of the United States, or in any department or officer thereof.

In shaping this legislation to that purpose, I will conclude my remarks by reiterating a provision from the report by the Committee on Foreign Affairs dealing with this resolution.

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.

Ever since the "police action" in Korea and more recently the "conflict" in Vietnam and throughout Indochina, the people of this country have been concerned about the question of legality of our commitments. I have described it as a "gray area" of authority that has never been properly evaluated, considered or addressed by the Congress and the executive branches of our Government. Both the Congress and the executive administrations of the past 23 years have, in my judgment, been derelict in not resolving this problem associated with the "gray area" of legal authority as expressed above.

It is for this reason that I will support

the Dennis amendment and the War Powers Resolution of 1973, and strongly encourage my colleagues to support it as well.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(By unanimous consent, Mr. BUCHANAN was allowed to proceed for an additional 2 minutes).

Mr. MARTIN of North Carolina. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from North Carolina (Mr. MARTIN).

Mr. MARTIN of North Carolina. Madam Chairman, I rise in support of the amendment to be proposed by the gentleman from Alabama (Mr. BUCHANAN). This amendment will cure, to my way of thinking, the only major defect in the war powers resolution, which otherwise I fully support. It is a responsible provision which puts the monkey in this matter right where it belongs—on our backs as the elected representatives of the people of the United States. It will prevent the Congress from being able, through inaction, to abdicate its decisionmaking role in questions of the most urgent national importance; especially in that such inaction ironically will have been able to determine our national policy.

This amendment says, in effect, that the Congress must act on the decision made my the Executive, voting up or down on the continued commitment of American forces by executive action. Much of the criticism leveled at the Congress centers on our inaction real or imagined. If we were to vote down this amendment we would give great substance to that criticism since a "no" vote would be to allow the Congress to dodge the very question we are debating, the question of the making of war.

A "yes" vote on this amendment will saddle the Congress with a heavy responsibility, a real burden—making a decision we all agree is our constitutional duty to make. It will only require that we vote. And that, it seems, is what we were elected to do.

The bill, as presently written, allows congressional inaction to abort executive action. Another draft that had been circulating would have had our inaction serve as confirmation of executive action. Neither language would be desirable. Both would permit yet another abdication of responsibility, and either one, while serving the purposes of a minority in either body, could operate counter to any given present Member's idea of how it might operate, since today's minority may be tomorrow's majority and today's proponents of inaction may not be tomorrow's. Those are practical considerations. Since mandating that our inaction at some future time will have a given effect cannot guarantee it will work to anyone's benefit 2, 10, or 20 years from now, as a practical matter we are better off mandating instead a commitment that we must take ourselves out and do what the people elected us to do, and do what we here say is our constitutional obligation.

This amendment requires that we take up the question of making war when it is pending and give the American people an answer.

Mr. McCLORY. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Madam Chairman, in endeavoring to resolve the conflict which appears to exist in the Constitution between the warmaking authority of the Congress and the authority of the President as Commander in Chief of the Army and Navy of the United States, it would seem that our function is simply one of establishing guidelines for interpreting the respective constitutional authorizations. We cannot, indeed, alter the Constitution nor in response to the acknowledged challenge to our authority can we arrive at the elbow of the President and review the executive actions which he is authorized to take.

Madam Chairman, the President's actions which under his broad authority require use of American troops outside the United States should be reported promptly to the Congress, as required specifically by the Dennis substitute. In addition, the Congress should be directed to approve or disapprove of the Presidential action within a period of 90 days as is also set forth in this measure. It follows that if the Congress by bill or resolution disapproves of the Presidential action the hostilities in which U.S. troops have become involved should be terminated and the troops withdrawn "as expeditiously as possible."

Madam Chairman, I am proud to be a cosponsor of this amendment and of the legislation in which its provisions are embodied (H.R. 3046). It is my considered opinion that this legislation can and would enable us to avoid future Koreas and Vietnams in which the Congress has been virtually ignored or at least inadequately informed.

Madam Chairman, I hope the Dennis substitute can be adopted and that the War Powers Act, as thus amended, may be promptly enacted by the Congress. Although I have no advance knowledge as to the President's attitude I see no reason why the President should not be willing to adopt the guidelines which are embodied in this measure and to gage the future conduct of our foreign affairs based upon the provisions of this legislation.

I urge the committee to act favorably on the Dennis substitute.

Mr. GUYER. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Ohio (Mr. GUYER).

Mr. GUYER. Madam Chairman, I am wholeheartedly in favor of the Dennis substitute to the bill. I remind the body that not since 1941 has Congress taken concerted action in either making or declaring war. This is positive and affirmative, and does not take away from the Commander in Chief his inherent right.

Mr. BUCHANAN. Madam Chairman, I would like to conclude. Can we bind a future Congress to act as prescribed in the Dennis substitute? If not, neither can sections 5 and 6 of the committee bill do so, and these provisions will not prevail. The committee bill changes the rules of the other body and creates new procedures out of step with any precedents or practices in history. If we cannot bind a future Congress, therefore, the committee bill is defective in its provisions. However, we say that we can bind the Congress to obey the law.

The Constitution says that the Congress shall act. People say that the Congress shall act on this critical question, and we are saying as a matter of law that Congress must act. While a future Congress can overrule actions of the present Congress by the passage of new law, I do not believe it can disregard or disobey the law.

Mr. FINDLEY. Madam Chairman, I rise in opposition to the amendment offered in the nature of a substitute.

Madam Chairman, I think before we make up our minds to embrace this substitute, we ought to read very carefully the language set forth. I hope each Member has a copy of the Dennis substitute. I secured a copy, although it was not easy, and I hope ample copies are available. It would be most unfortunate if anyone votes for this substitute, not having seen the Dennis substitute amendment.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. FINDLEY. I yield to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, I just want to make this one comment. This substitute amendment has been sent to every Member of the House, including the gentleman in the well. It has been printed in the CONGRESSIONAL RECORD and is on both tables on the floor of the House.

Madam Chairman, I just wanted to comment on that.

Mr. FINDLEY. I am glad the gentleman has clarified that. I should like to add that the language which was handed to me as being the substitute now is amended by striking section 6, so I believe it is very appropriate for me to urge Members to read carefully what is in the substitute.

I draw attention first of all to the language on the top of page 2, the words reading:

except in case of emergency or necessity, the existence of which emergency or necessity is to be determined by the President of the United States.

Those words in effect give to the President and to the President alone the right to define the reserve powers of the President in the warmaking field.

During the deliberations of our subcommittee witness after witness appeared before the subcommittee urging the subcommittee to define the reserve powers of the President. I believe the Senate has taken up the Javits bill, which does include a definition of reserve powers. Every witness who appeared before us who supported a definition of reserve powers in the bill urged us to make the most limited possible definition of reserve powers.

There was a witness or two who advised against trying to define reserve powers of the President, but every witness who wanted a reserve powers definition cautioned us to make that as strict as possible.

This language goes to the extreme. This permits the President and the

President alone to determine what emergency or necessity requires that use of U.S. military forces. I cannot imagine a broader definition of reserve powers.

I would also draw the attention of Members to the language on page 4, particularly the language on lines 12, 13, and 14. This has to do with the withdrawal on order of the Congress, by some appropriate resolution, of military forces from hostile engagement. But this language commands the President by statute to have due regard in setting the timetable, the time required to effect this withdrawal, for the safety and necessities of allied or friendly nationals and troops.

There is still some serious question as to whether the reserve powers of the President actually extend to the safety of our own nationals on foreign territory. It just depends upon the circumstances. But here in this bill we are asked to convey to the President a mandate by statute. That is what this is all about; it is a mandate by statute to have due regard for the safety and the necessities of allied or friendly nationals.

Is that wise, for us to spell out in this bill an injunction to the President to plan the withdrawal of our forces only after due regard has been given to the safety and necessities of foreign nationals? Do we really want to go that far?

This could be the very circumstance that caused us to be involved in the hostile action in the first place, the very circumstance which caused the President to send military forces into foreign combat, the very circumstance that the Congress might want to terminate, might want to get our forces to disengage from. Yet the basic statute here, which we are asked to support, would spell out the mandate to the President that he would have to take into account the safety and necessities of friendly and foreign nationals in scheduling the withdrawal.

I believe it is a most unwise substitute we are asked to support.

Mr. BIESTER. Madam Chairman, I rise in opposition to the amendment in the nature of a substitute.

Madam Chairman, with respect especially to the remarks of the gentleman from Alabama (Mr. BUCHANAN) who focused on the characterization of the Dennis substitute as a stronger bill and a stronger measure than the committee bill, I would like to dwell, if I might, for a few moments on what we mean by "strong." If we mean by "strong" that it is a bill which is going to restore to a majority of the Members of Congress who represent a majority of the American people the guarantee that they shall make the final determination with respect to the general warmaking powers, then the committee bill is the stronger bill, and that is the reason I support it.

The Dennis substitute is in that respect a far weaker bill. First of all, under the Dennis substitute a minority of the other body could prevent the arising of this question on the floor of the other body, and, therefore, a minority of the membership of the entire Congress could frustrate the will of the majority under the Dennis substitute.

Second, under the Dennis substitute, in the event that a majority of both Houses of Congress passed a bill which prohibited the continuation of the Presidential war and the President chose to veto that bill, then under the Dennis substitute the majority will of the Congress, unless it could muster a two-thirds majority, would not be able to override the Presidential veto and would not be able to prevent the Presidential war.

Now, with respect to the committee bill, we have handled, it seems to me, both of those problems. First, with respect to expediting the consideration of the measure in question, we provide in section 5 a whole range of methods by which we give special urgent scheduling in both Chambers for the consideration of the appropriate bill or resolution. Now, that guarantees at least that a majority of the Members of those Chambers will have their say.

Second, with respect to the matter of Presidential veto, what the committee did was to begin with the Constitution and the fact that the Constitution gives to the Congress the power to make war, and we, therefore, felt that it was important to prevent a Presidential veto from having the effect of frustrating the majority will of the American people as expressed by the majority of their Houses of Congress, in determining not to make war.

Therefore, we provided that unless the Congress acts, the action of the President must terminate. What does that mean if we project ourselves down the legislative road? It means that if the President vetoes what the majority of Congress has wrought, then there is no legislative action, and he is bound under those circumstances to terminate the hostilities he has engaged us in. And that means that vetoing the bill will not be sufficient to frustrate the majority will of the Congress and thus will not be sufficient to frustrate the majority will of the people of the country.

Madam Chairman, the gentleman from Indiana referred to a "successful war." I do not know what a totally successful war is, but it seems to me that a war which is fought by the people of this country is not going to be in any degree a success unless it is supported by a majority of the people of this country. That is the purpose of the committee bill.

Madam Chairman, I urge the rejection of the substitute, and I urge that we approve the committee language.

Mr. FRELINGHUYSEN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I think the discussion, even though it is being held before a comparative handful of Members, indicates the fact that we are dealing with a very difficult situation. We have before us a major alternative, which in my opinion is preferable to the proposal submitted by the committee, because it does require affirmative action in order to change national policy with respect to a commitment of troops.

I would guess that very few Members have been able to follow the detailed discussions pro and con about the Dennis substitute. Yet what we do with respect to this resolution and whether or not we accept this substitute may make a very substantial difference in our capacity to handle a crisis situation.

I would like to point out a couple of things which to my mind make the Dennis substitute preferable to what is being proposed.

On page 4, as an example, if there should be a decision by the Congress that hostilities should end, there is a provision, and I quote from the language:

> the President shall discontinue the action so taken by him and so reported to the Congress, and shall terminate any hostilities which may be in progress and shall withdraw, disengage, and redeploy the Armed Forces of the United States which may be involved, just as expeditiously as may be possible having regard to, and consistent with, the safety of the Armed Forces of the United States, the necessary defense and protection of the United States, its territories and possessions, the safety of citizens and nationals of the United States who may be involved, and the reasonable safety and necessities, after due and reasonable notice, of allied or friendly nationals and troops.

I might say there are no such qualifications regarding the obligation that would be imposed on the President in the committee bill. No attention is given there to what might be the effect on the safety of our own troops and the impact on the allies fighting alongside our own troops. I think at the very least, if there is to be a termination decided by the Congress, we at least ought to allow for a reasonable withdrawal such as provided for by the Dennis substitute.

Mr. DENNIS. Will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman.

Mr. DENNIS. I would like to say I appreciate very much the comments of the gentleman from New Jersey on this particular matter.

My friend, the gentleman from Illinois. animadverted on that subject considerably and, of course, what I am doing here is saying that if we vote disapproval, we should withdraw as expeditiously as possible, and then having due regard to cerain things; and what is due regard is left pretty much to the Executive. These are guidelines that he needs and we should give him, and about all we can give him in a statute. If we have friends helping us, we want at least to tell them that we are going to pull our troops out.

I do not think that is objectionable even to my friend from Illinois.

Mr. FRELINGHUYSEN. I might say criticism was made of the Dennis proposal because no provision was made for expeditious action by the Congress.

I am not sure what the point of a war powers resolution is. Is it to remind us of our obvious, and inescapable, response so that Congress can worry about the fact that our troops are actually committed to hostilities and, if so, whether we should take appropriate action either to support the commitment or to say that we think it is unwise? Why do we have to spell out a 120-day provision so the Congress of the United States can make up its mind on a matter of this consequence?

What has already been said underlines the fact that if the Congress has suffi-

cient details about why the President is about to commit, or has committed, troops, we should be able to have a prompt reaction, either of support or criticism of that action. I do not think we should be trying to impose an inflexible time period, where the President is assumed to have the responsibility without action by the Congress but after a deadline is not allowed to have responsibility unless the Congress has acted.

The gentleman from Texas (Mr. ECKHARDT) is quite right in saying the 120-day provision, no matter how written, is implicitly at least recognizing that the Congress gives the President certain responsibilities in situations of this kind.

There is no attempt to define the nature of this Presidential responsibility, as the Senate has done. However, I should warn the House no matter what we end up with finally, if we do end up with anything at all, we shall have to cope with different approaches that may be made by the Senate. We may end up, instead of 120 days leeway for the President to act, with something else, or we may have a specific definition of the President's responsibility.

SUBSTITUTE AMENDMENT OFFERED BY MR. BENNETT FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DENNIS

Mr. BENNETT. Madam Chairman, I offer an amendment as a substitute for the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The Clerk read as follows:

Substitute amendment offered by Mr. BENNETT for the amendment in the nature of a substitute offered by Mr. DENNIS: Strike out all after the resolving clause of House Joint Resolution 542, and insert in lieu thereof:

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

SEC. 2. The President shall consult with the leadership and applicable committees of Congress before substantially enlarging United States Armed Forces in any foreign nation; and before placing any United States Armed Forces in any foreign nation where none had been immediately prior to such placement.

SEC. 3. The President upon doing any of the things set forth in section 2 shall submit within seventy-two hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions under the authority of which he took such action;

(C) the estimated scope of activities;

(D) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to placing or enlarging United States Armed Forces abroad.

SEC. 4. (a) Within one hundred and twenty calendar days after a report is submitted or is required to be submitted pursuant to section 3, the President shall remove such enlargement of Armed Forces and terminate such placement of Armed Forces with respect to which such report was submitted, unless the Congress enacts a specific authorization for such use of Armed Forces.

(b) Notwithstanding subsection (a), at any time that the United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories such forces shall be disengaged by the President if the Congress so directs by concurrent resolution.

SEC. 5. (a) Any resolution or bill introduced to terminate the utilization of United States Armed Forces as above described or to provide for disengagement as referred to in section 4(b) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Senate Foreign Relations Committee, and one such resolution or bill shall be reported out by such committee, together with its recommendations, within thirty days.

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

(c) Such a resolution or bill passed by one House shall be referred to the appropriate committee of the other House and shall be reported out within fifteen days. The resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three legislative days after it has been reported, unless such House shall otherwise determine by yeas and nays.

SEC. 6. For purposes of subsection (a) 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 (a) 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 (a), within three days of the convening of such next succeeding Congress.

SEC. 7. Nothing in this Act (a) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties;

(b) Shall be construed to represent congressional acceptance 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; or

(c) Shall be construed as granting any authority to the President with respect to the commitment of United States Armed Forces to hostilities or to the territory, airspace, or waters of a foreign nation which he would not have had in the absence of this Act.

SEC. 8. 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.

SEC. 9. This Act shall take effect on the date of its enactment.

Mr. BENNETT. Madam Chairman, I am presenting House Joint Resolution 653 as a substitute for the Dennis amendment in the nature of a substitute for House Joint Resolution 542. This bill is set out on page 24136 of the Monday, July 16 Extensions of Remarks of the CONGRESSIONAL RECORD. So if the Members want to read it word for word, they can at that page.

The essential part of the change is in section 2 where the bill I have introduced reads as follows:

SEC. 2. The President shall consult with the leadership and applicable committees of Congress before substantially enlarging United States Armed Forces in any foreign nation; and before placing any United States Armed Forces in any foreign nation where none had been immediately prior to such placement.

This will substitute for the language of House Joint Resolution 542 which reads as follows:

The President in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostilities or to situations where hostilities may be imminent, and after every such commitment shall consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities may be imminent.

The purpose of this change that I have suggested is that House Joint Resolution 542 assumes that the President has the power to put the United States at war under certain circumstances, and I oppose writing that into a statute. I oppose that because that could be construed as an act by Congress giving the President that power, which I deny that he has under the Constitution without an act by Congress.

On the other hand, the bill I have introduced, House Joint Resolution 653, gives no such war powers to the President and only applies to the enlarging of the U.S. Armed Forces in any foreign nation or placing them there in the first place.

I may say that, of course, everything that can be done to end hostilities under the committee bill can likewise be done under the bill which I have introduced. The only thing that the committee bill does which my bill does not do is to give war powers to the President that he does not have under the Constitution. The remainder of the bill I have introduced requires the President to go through the same reporting process and receive the same consent of Congress as the committee bill does. Although quite a few words are changed, this is the sole, central difference between these bills.

As I mentioned, my bill is set out in haec verba in the Monday, July 16, CONGRESSIONAL RECORD in the Extensions of Remarks at page 24136. I found in reading again House Joint Resolution 653, my bill, that there were typographical errors made on page 3, at lines 5 and 23, which have been corrected in my proposal and the reading just now has reflected those corrections.

Mr. STRATTON. Madam Chairman, will the gentleman yield?

Mr. BENNETT. I yield to the gentleman from New York.

Mr. STRATTON. I just want to clarify this matter a little bit with the gentleman from Florida because these bills are all rather complicated, and I think they all sometimes get a little confused. The gentleman is offering his amendment, as I understand it, as a substitute for the substitute offered by the gentleman from Indiana; but if I understand the gentleman's explanation correctly, his bill is actually almost identical with the committee bill, with the sole exception that the powers granted to the President under the committee bill he feels may be too extensive and, therefore, his bill is even more restrictive of the President's authority than the committee bill.

Mr. BENNETT. My bill does not grant

any powers to the President. It puts limitations on the President.

Mr. STRATTON. That is the way I understood it. The gentleman's bill is, therefore, more limiting on the President than the committee bill; is that not correct?

Mr. BENNETT. Very much so.

Mr. STRATTON. Whereas the Dennis substitute, if I understand it correctly, is less limiting on the President than the committee bill and gives the President a little bit more leeway. In particular, the Dennis substitute eliminates the provision of the committee bill that the President must withdraw the troops at the end of the stated period, even if Congress has taken no action at all.

Mr. BENNETT. I must say I have not heard any suggested language by anyone, other than myself, prohibiting granting additional powers to the President under this bill. I do not want to grant any additional powers to a President to put this country in a war without action by Congress. There are two things of malaise today in the country with respect to war powers. One of them is the begining of war in the first place; and the other one is the continuing of the war after it starts, regardless of who starts it.

The committee primarily was looking at the second problem. I had looked at the second problem in the same way as the committee, accepting the same procedures they suggested as these seem to be valid procedures. The only difference is that my bill does not give any new powers to the President to start a war. I believe that the committee bill does, unfortunately, give the President additional powers to begin a war. We do not need that.

Mr. BINGHAM. Madam Chairman, I would like to make a few general comments about this bill. Participating in the work of the subcommittee under the leadership of the gentleman from Wisconsin, the chairman (Mr. ZABLOCKI), on this bill was one of the most satisfying experiences I have had since I have been in the House of Representatives. We came together a disparate group with rather substantially different points of view on the solutions to this war powers problem and we emerged with a very considerable degree of agreement and overwhelming support in the subcommittee. I think the chairman of the subcommittee deserves a great deal of credit for that, and so do the Members. I think it is a tribute to the committee and to the legislative process that is carried on here under the best of circumstances that we did emerge with this kind of consensus.

In the committee, we wrestled with many of the problems that have been reflected in the debate here today. We came out with a solution which is no doubt not perfect. I myself had a different approach to begin with but it is an essentially sound solution. All I have heard here today has confirmed me in the conviction that the committee bill is the best proposition to deal with this war powers problem which has been put before the House.

A word about the substitute offered by the gentleman from Florida (Mr. BENNETT). I do consider it superior to the Dennis substitute as it comes closer to the committee bill. But I believe the gentleman is worrying about a nonexistent problem when he says the committee resolution gives to the President powers which he does not now have. The resolution in Sec. 8 specifically states as clearly it is possible to state it that it does not confer any new or additional powers on the President that he does not now have.

The resolution deals with a practical problem which has been existing since the founding of this Republic, that the President on over 100 occasions has insubstitute in that it would not deal with a naval war. There is nothing in it to deal with that problem in this resolution. We certainly are not creating it with the passage of this bill.

There is also a weakness in the Bennett substitute in that it would deal with a naval war. There is nothing in it to deal with war which might begin at sea.

As far as the Dennis substitute is concerned, let me concentrate my remarks on two problems. First of all we can say we will obligate a future Congress to take action on a matter at a particular time, but we cannot make them do it. There are all kinds of reasons why Congress might be frustrated from taking action. It might be frustrated from action by a filibuster in the other body. It might be frustrated from action because, while a majority voted to disapprove a Presidential war, it might not have the votes to override a veto. We cannot guarantee that action will be taken one way or another in any specified period of time. We simply cannot do that. So we have to provide what the consequences will be if the Congress fails to act.

The original Dennis resolution provided that failure to act would be construed as approval. He has dropped that out, so therefore that question is left up in the air. The committee resolution says the consequence of no action is disapproval.

A number of Members, Members I respect have argued that the Congress should not be opening the road to action by nonaction, but there is nothing so new about that. That is contemplated in the Constitution when it says the Congress will have the power to declare war. The Constitution does not say the Congress shall vote yes or no on a declaration of war. It says the Congress shall have the power to declare war. What happens if the Congress does nothing? Then there is no declaration of war, so that is action by inaction, if you will, right in the Constitution.

Another key question in his bill is the matter of concurrent versus joint resolution. The gentleman from Indiana proposes to leave that question to be settled at a future time. To me, that is the worst of all possible solutions. We should answer that question in the legislation before us. Granted, it is a controversial question; granted, there is some constitutional question about it, but there are well-established precedents that the Congress can act by law to establish a procedure whereby it can do something in the future by concurrent resolution. We have done that on many occasions. We have done it in various resolutions dealing with foreign affairs where the Congress provides that the force of the resolution may be reversed later by concurrent resolution.

If we do not provide specifically that a congressional veto over a Presidential war may be exercised by concurrent resolution, we are not doing anything worthwhile. If we say merely that the House and Senate may or must act at some future date by joint resolution or other enactment of law we might as well quit and go home, because we will have provided the Congress with no tool it does not already have to cope with Presidential wars.

Mr. GERALD R. FORD. Madam Chairman, I move to strike the requisite number of words.

Mr. BUCHANAN. Madam Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

One hundred two Members are present, a quorum.

Mr. GERALD R. FORD. Madam Chairman, at the outset let me state my own position categorically. I support the Dennis substitute. If that is unsuccessful, I will vote to amend sections 4b and 4c. In the event that either the Dennis substitute does not prevail or those specific sections are not modified or deleted, it is my intention to vote against the bill on final passage.

Madam Chairman, in the last 20-some years, because of our experiences in Korea and in Vietnam, many within the Congress and many throughout the country sincerely believe that we ought to improve the role of Congress in these problems involving peace or war.

I have indicated at the outset that I think we can. On the other hand, in my judgment, to go down the wrong path makes the problem more difficult and worse, and therefore rather than bad legislation, as I see it, I would prefer none.

Madam Chairman, let me add another comment, if I might. I deny, and deny it emphatically, that Congress has not had the tools in the last 20-some years to play a more effective role. We have had the appropriation process every year; the Defense Department appropriation bill and the foreign aid appropriation bill. At the same time, every year we have had various authorization bills where we could have done something if a majority of the Members felt so inclined.

During the last several years, a majority of the other body sought to take some action. During that period of time, up until a few weeks or a month ago, there was not a majority in the House that voted that way. But, the capability existed, and, therefore, we have not been without a tool or without a weapon to meet the problem.

Some have the impression, Madam Chairman, that the President is opposed to any—and I underline "any"—war powers bill.

During the latter part of June, when this joint resolution was on the floor in general debate, I consulted with the White House and the Department of

State. I have found out through a telegram sent to me by the President that he is in favor of working with the Congress to achieve a war powers bill. With the permission of the Members I will read the telegram that was sent to me June 26, 1973, which does express the President's viewpoint on this important situation. I emphasize he does want to work with the Congress and indicates that he will try to come up with a new and better way to meet the problem with which we are concerned.

The telegram reads as follows:

As the House begins consideration of H.J. Res. 542, the war powers bill, I want you to know of my strong opposition to this measure.

I am unalterably opposed to and must veto any bill containing the dangerous and unconstitutional restrictions found in sections 4(B) and 4(C) of this bill.

However, I fully support the desire of Members to assure Congress its proper role in national decisions of war and peace, and I would welcome appropriate legislation providing for an effective contribution by the Congress.

I urge you to reject H.J. Res. 542 and to work instead for legislation that I can sign and which can enhance the ability of Congress and the Executive to fulfill their historic constitutional roles and do so in a way that reinforces the strength of both.

RICHARD NIXON.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. GERALD R. FORD was allowed to proceed for 5 additional minutes.)

Mr. GERALD R. FORD. I believe this telegram I have just read from the President to me, dated June 26, clearly indicates his willingness to cooperate in putting together legislation that will make the Congress and the Executive partners in the process when these problems of war and peace come before us.

Therefore, I believe, in light of what the President has said, as to sections 4(b) and 4(c) in House Joint Resolution 542, that we would be well advised in the first instance to accept the Dennis substitute. If we are unsuccessful in convincing the Committee of the Whole that it is the right procedure, we should then modify or delete sections 4(b) and 4(c).

The President has gone a long way, let me assure the Members, from an attitude I understood was his point of view a few months ago. I understand the attitude of the Department of State has changed. Previously, it was my understanding it was very inflexible. I believe this telegram is quite clear in stating that flexibility is now the policy of the executive branch.

So with these new efforts and this new attitude, I believe we would all be better off to accept the Dennis substitute and, if that is unsuccessful, to try to amend or modify sections 4(b) and 4(c).

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to my friend from New York.

Mr. WOLFF. The distinguished minority leader read a telegram from the President as to what the President did not want. However, I wonder if the minority leader could tell us what the President thinks the warmaking powers of the Congress are?

Mr. GERALD R. FORD. Well, in this telegram the President simply expresses the point that he believes the Congress is trying to go too far. In a telegram of this nature, I would not expect him to clearly define the war powers or the lack of war powers.

Mr. WOLFF. Madam Chairman, that is what we are planning to do here, and that is why a telegram from the President at this point is somewhat of a self-serving document. What we are trying to do is to limit the powers of the President.

Mr. GERALD R. FORD. Madam Chairman, the gentleman from New York, of course, understands that there are some Members on his side who think that the committee bill expands the power of the President. So there is not unanimity from the gentleman's side as to whether there is a contraction or an expansion of the President's warmaking powers.

Mr. FRELINGHUYSEN. Madam Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the genlteman from New Jersey.

Mr. FRELINGHUYSEN. Madam Chairman, I thank the gentleman for yielding.

Let me begin by saying that I did not realize until now that the President had indicated that he would veto House Joint Resolution 542 as it came out of the committee, but in my "Dear Colleague" letter in June I predicted that I saw no alternative but a veto if the language were not changed.

It does seem to me that we are trying to play with a very basic responsibility of the President, both with respect to a concurrent resolution and an attempt to require a termination of hostilities by the President by inaction, a failure to act on the part of the Congress. I would hope that we would move along the lines of positive action by Congress in order to establish whether or not we approve of what the President has done.

Madam Chairman, if the gentleman would allow me to proceed, the gentleman from Michigan says the Congress has for 20 years had the tools to do more than it has. This is quite obvious to most of us who have been here for any length of time that we have used those tools on a number of occasions. We have approved on several occasions a variety of resolutions, not only with respect to the Tonkin Gulf but with respect to the Mideast and with respect to Quemoy and Matsu, to mention just three. I feel in many cases such resolutions, if offered in the future, may be more specific than they have been in the past. But we have had the capacity, and we have faced up to our responsibilities in the past. I believe our reaction in the future should be dependent upon what the nature of that future crisis is rather than try to write legislation which will cover all future situations.

Mr. ZABLOCKI. Madam Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Madam Chairman, several Members have expressed the desire that the telegram be reread. After it has been reread, I hope that the gentleman from Michigan will indicate whether the President indeed has some specific language that he endorses. Perhaps the gentleman could tell us whether the President is in favor of the resolution that is pending now in the other body.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. GERALD R. FORD) has expired.

(On request of Mr. ZABLOCKI and by unanimous consent, Mr. GERALD R. FORD was allowed to proceed for 5 additional minutes.)

Mr. GERALD R. FORD. Madam Chairman, I will say to my friend, the gentleman from Wisconsin, that I cannot give him any more specifics as to what the President is proposing affirmatively than those broad suggestions he makes in the telegram. He is very specific and categorical in reference to House Joint Resolution 542, and by inference certainly opposes the companion bill in the other body.

Mr. ZABLOCKI. And if the gentleman will yield further, is that true with respect to any other bill and with respect to the substitute now being considered?

Mr. GERALD R. FORD. No. In my discussions with the White House, I believe there is—and they say it by inference in the telegram—a sympathy with the approach that is suggested by the gentleman from Indiana or to some amendments to sections 4(b) and 4(c) if the Dennis substitute does not prevail.

I do not have any concrete or specific language which they have submitted to me. The President simply has indicated that one is objectionable, and he hopes that something is adopted that works toward a better partnership between the Executive and the Congress.

Madam Chairman, if I might, I would like to make a comment or two, and then I will yield to the gentleman from New York.

During the last 4 or 5 months I have heard a great deal in this Chamber and from the other Chamber, and I have read a great deal all around the country to the effect that the Congress has given up authority and that the Congress ought to do something to retrieve that authority.

Allegations have been made that we have given up certain legislative prerogatives, and we ought to insist that those prerogatives come back into our bosom.

Now, here is a clear-cut issue. In the committee bill there is an almost unbelievable approach from a procedural point of view. If what I just said a minute ago was the desire of the majority of the Members of Congress, you are going to reassert or retrieve that jurisdiction, prerogative, and privilege by doing nothing. How silly and asinine can we be?

If you want to assert a right, you ought to be willing to stand up and say, I will vote for or against a certain power, or privilege or prerogative. However, under the committee bill, the Congress, in my opinion, just backs away from any courage in meeting the challenge of a tough

issue. You say if we in the Congress do nothing in a legislative way, "You, Mr. President, cannot continue a military conflict." Well, if we do not want a military conflict continued, then the Congress ought to have the guts and the will to stand up and vote against it instead of saying 'You cannot do it," by doing nothing.

No Congress should be so weak willed that a majority would be unwilling to stand up and be counted in a crisis.

Mr. EVANS of Colorado. Will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman.

Mr. EVANS of Colorado. Is that not exactly what the Constitution of the United States says? That without an act by the Congress the President has no power to wage war? It does not say anything about courage or guts, but it says act.

Mr. GERALD R. FORD. Why has not some action been taken if a majority of the Members were convinced? By the Congress not doing something, then what is your interpretation on the last 7 or 8 years that we were in the war in Vietnam?

Mr. EVANS of Colorado. Two things. First, historically, for about 200 years our Presidents have been doing this without any Congress acting.

Mr. GERALD R. FORD. Doing what?

Mr. EVANS of Colorado. Involving this country in military activities without specific action by the Congress.

Number two, because of Vietnam this Congress is trying to clear up the situation. But certainly the committee resolution is four-square with the Constitution because it says that the power to declare war rests with the Congress and requires that we act.

Mr. GERALD R. FORD. But if the Congress is as brave as some people say it is and if it is as sincere as some people allege it is about wanting to do something affirmatively, then it ought to have the courage to stand up and vote for it.

Mr. STRATTON. Will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from New York.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, at the request of Mr. STRATTON, Mr. GERALD R. FORD was allowed to proceed for 2 additional minutes.)

Mr. STRATTON. I thank the minority leader for yielding to me.

Is the question not involved in this legislation not simply the matter of a war declaration but, even more significantly, the use of the President's powers as Commander in Chief and as the only individual who is qualified under the Constitution to deal with foreign governments?

If we tie the President's hands, particularly in this negative way as the gentleman indicated, by inaction on the part of the Congress, are we not really undermining the deterrent power of American forces as exercised by the President in negotiations with other countries? If the other countries know that anything the President says can be negated in 30 days simply by inaction of the Congress, they will certainly not pay much attention to him, will they?

Mr. GERALD R. FORD. I think the gentleman from New York is precisely right. What we really want is deterrence and not war.

Mr. STRATTON. Will the gentleman yield further?

Mr. GERALD R. FORD. I yield.

Mr. STRATTON. Would not President Kennedy have found it a lot harder to get Khrushchev to back down in Cuba in 1962 if he had had his hands tied in this way while trying to deal with Mr. Khrushchev?

Mr. GERALD R. FORD. I do not want to get into personalities, but I just think that the capability of a President to act without his capability being hindered by inaction of the Congress is bad policy.

It is no good policy for the country nor is it very brave on the part of the Congress to hamstring the Commander in Chief by no legislative action.

Mr. GUBSER. Madam Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from California.

Mr. GUBSER. I thank the gentleman from Michigan for yielding to me.

Madam Chairman, if the very rigid and strict construction of the Constitution, as made by the gentleman from Colorado (Mr. EVANS), were to be valid, would it not be true that the President would have no right to make any troop commitment whatsoever, even for the 120 days provided in this bill?

Mr. GERALD R. FORD. I think that is correct.

Mr. GUBSER. I think that very thoroughly explodes the argument presented by the gentleman from Colorado (Mr. EVANS).

Mr. BIESTER. Madam Chairman, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Pennsylvania.

Mr. BIESTER. Would the gentleman agree that it is a worthwhile objective for the House this afternoon to arrive at a process by which a majority of the Congress could express its will, despite a Presidential veto, so far as warmaking powers are concerned?

Mr. GERALD R. FORD. I agree, and I said earlier, by the appropriation process or by the authorization process, a majority of the Congress can do it just as they could do it for the last 200 years.

I for one am not going to undercut the war powers of a President by the traditional system or procedure of a Presidential veto and one-third of the Members of this body or the other body having the capability of sustaining a veto. That system has worked pretty well over the years, and I will not undercut it with any language or provisions in new legislation.

Mr. FRASER. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the pending amendment.

Mr. SEIBERLING. Madam Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Madam Chairman, I thank the gentleman for yielding to me. I wonder if we could have the distinguished gentleman from Michigan read us again the telegraph from the President of the United States, since we do not have any written copies available for the Members.

Mr. GERALD R. FORD. Madam Chairman, if the gentleman from Minnesota will yield, I will be glad to do so. I have just asked one of our staff members to make copies, and as soon as they are available I will be glad to distribute them.

Madam Chairman, the telegram is directed to me. It is dated June 26, and it reads as follows:

> As the House begins consideration of H.J. Res. 542, the war powers bill, I want you to know of my strong opposition to this measure.
>
> I am unalterably opposed to and must veto any bill containing the dangerous and unconstitutional restrictions found in sections 4(b) and 4(c) of this bill.
>
> However, I fully support the desire of Members to assure Congress its proper role in national decisions of war and peace, and I would welcome appropriate legislation providing for an effective contribution by the Congress.
>
> I urge you to reject H.J. Res. 542 and to work instead for legislation that I can sign and which can enhance the ability of Congress and the Executive to fulfill their historic constitutional roles and do so in a way that reinforces the strength of both.
>
> RICHARD NIXON.

Mr. SEIBERLING. Madam Chairman, I thank the gentleman from Michigan.

Mr. FRASER. Madam Chairman and Members of the Committee, I will address my remarks primarily to the amendment offered by the gentleman from Indiana (Mr. DENNIS) because I think the significance of that proposal should not be overlooked.

If the Dennis proposal were accepted, for the first time in the history of the United States we would have conferred upon the President an open-ended authority to use troops wherever and whenever he determined that an emergency or necessity existed, without reference to any other constraints of the Constitution or of any treaty procedures, or any other statutory provision.

In other words, rather than the bill being some kind of a restraint or establishing some kind of safeguards on the President's authority to commit U.S. forces to hostility, it would open the door wide open, wider than it has ever been in the history of the United States.

It gives by statute the authority exclusively to the President to determine when an emergency exists—it says "to be determined by the President of the United States," not by the Supreme Court, not by the Congress, but by the President alone. He would have a sole and exclusive discretion to determine when and where an emergency existed and, having made that determination, could use our forces anywhere in the world without any constraint of any kind.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. FRASER. I would prefer to finish my statement, and I will yield to the gentleman in a moment.

That, in my judgment, is such a disastrous provision that if there are some

who do not want any War Powers Act, they ought to vote for the Dennis amendment because, in my judgment, it would then be terribly urgent to defeat the whole measure. I, for one, would never be willing to go back to my district and say that I had given the President carte blanche authority to use troops, to use the Air Force, to use the Navy whenever he found an emergency, without any standards, without any constraints, without any judicial review of any kind.

The other part of the Dennis amendment is meaningless. What it says is that Congress shall by law have the authority, in effect, to regulate the President. Of course, we have that now, so that means nothing. It is a nullity. The big threat in this bill is this provision that gives the President the sole authority without standards to determine when and where forces shall be used around the world.

With respect to the Bennett substitute, may I say that since it does not deal with warmaking powers, I do not think it ought to be adopted. It may be an interesting exercise with respect to the deployment of troops, but it specifically excludes any reference to commitment of troops to hostilities, and, therefore, it should not be of primary interest to the House, even though the proposal otherwise, I think, merits some respect and consideration.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Indiana.

Mr. DENNIS. I thank the gentleman for yielding.

I should like to point out to the gentleman from Minnesota that the very first thing my bill states is the principle, which I consider important, that the President should not commit troops to combat unless there has been an attack on the country or a declaration of war, without prior congressional approval. Then I recognize his right to do so in an emergency. But I would suggest to the gentleman that he has that right and exercises it today, and he today determines when there is such an emergency and when he acts without consultation with the Congress, so it is nothing different or new. What is new is that I thereafter require him to report to us and require us to vote it down if we feel we should.

Mr. FRASER. Why did not the gentleman, if he wanted to write this loophole a little more carefully, add only the words "except in case of emergency or necessity"? Why did the gentleman give the President the exclusive authority to make that determination? That is where the disaster lies in the provisions of this bill.

Mr. DU PONT. Madam Chairman, I move to strike the requisite number of words.

Mr. THONE. Madam Chairman, will the gentleman yield?

Mr. DU PONT. I yield to the gentleman from Nebraska.

Mr. THONE. I support this War Powers Act. I do agree with the minority leader, the gentleman from Michigan (Mr. GERALD R. FORD) that there must be a provision here requiring affirmative action by the President and Congress.

Future Vietnams would be prevented by passage of the congressional war powers resolution. This will have my vote on final passage.

The resolution would: First, direct the President to consult with congressional leaders and appropriate committees in cases involving commitment of U.S. forces to hostilities abroad; second, require a formal Presidential report to Congress within 72 hours of such commitment without prior congressional authorization; third, permit Congress by a majority vote of both Houses to halt such combat; fourth, prohibit a filibuster against a resolution to stop a conflict; fifth, specify that the measure would not alter provisions of any existing treaty; and sixth, be directed toward any commitment of U.S. forces abroad existing at the time of enactment of this resolution.

There are some changes that I hope to see made in the original resolution. As it is now written, it will require the President to stop a foreign battle if Congress does nothing. This may be unconstitutional. I will support an amendment that would require the Congress to pass a resolution against the combat before the President is forced to end it.

An amendment is expected that would allow the President to veto such a resolution by Congress. I will oppose this.

Under the Constitution, Congress is given the power to declare war and the President has authority over the Armed Forces as Commander in Chief. At the time the Constitution was up for adoption, Alexander Hamilton wrote concerning the President's warmaking powers:

> It would amount to nothing more than the supreme command and direction of the military and naval forces . . . while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.

There is no question but that in recent years a series of Presidents have taken war powers away from Congress.

To illustrate how little Congress had to say about recent wars, let us review how we got involved in Vietnam. President Eisenhower sent a few military men into South Vietnam as teachers to help train the armed forces of that nation.

In President Kennedy's term, advisers and observers in American uniforms became so numerous that they were accompanying South Vietnam soldiers into combat. The first U.S. military casualty in Vietnam in December 1961 was one of these advisers.

Under President Johnson, American commitments were greatly increased.

It was not until after three Presidents had involved us in the Vietnamese war that Congress in 1964 approved the Gulf of Tonkin resolution which gave congressional authorization to the President to use U.S. military force in Vietnam.

Another example of military action without congressional approval was Laos, where U.S. bombing began in 1965. Four years passed before the public or most Members of Congress were informed that it was taking place. Only this month have we found out how soon it started.

There is an ancient Vietnamese legend concerning Son Tinh, God of the Mountain, and Thuy Tinh, God of the Water. They became involved in battle. It never ended because whenever Thuy Tinh tried to destroy his enemy by raising his raging waters higher, Son Tinh just raised his mountain higher.

President Johnson found himself in such a dilemma. The higher he raised the U.S. commitment in South Vietnam the more Communists poured down from North Vietnam.

When President Nixon came into office, more than half a million U.S. ground troops were in South Vietnam. I supported the President through 4 years of efforts which succeeded this year in extricating us from the situation he had inherited.

It is my hope that no President will ever again lead us into war, bit by bit, without action by Congress. Passage of the congressional war powers resolution will insure that the public as well as Congress will have a chance to express themselves before our Nation makes an extended commitment to combat.

Mr. DU PONT. Madam Chairman, it is with humility that I rise to state my opposition to the views of the President of the United States. The President of the United States has very grave responsibilities in the field of foreign policy, and as the Chief Executive of our Nation his opinion demands respect and very careful consideration. But as a member of the legislative branch of the Government, a coequal branch, I think we must recognize that we have responsibilities, too. And our responsibilities in the exercise of foreign policy are also of utmost importance.

So I must respectfully disagree with the President's interpretation of 4(c) of this bill, that section which gives the power to the Congress to terminate Presidential military action by a concurrent resolution.

The President believes that section is unconstitutional; I disagree. I believe very strongly that it is constitutional, and, further, that it is an intelligent approach to the problem of allocating warmaking powers, and, further still, that it is a wise exercise of our legislative power.

I base my argument on the Constitution of the United States. The Constitution sets forth our legislative power very clearly in article I, section 8. Let us look at what it says. It says that the Congress shall have the power to provide for the common defense; that the Congress shall have the power to raise and support armies; to provide for a navy; to repel invasions. And it says that the Congress of the United States shall have the power to declare war.

In contrast to that it simply says in article 2, section 2, that the President is the Commander in Chief of the Armed Forces. That is all. It is the Congress that has the power to make war. That power comes from the Constitution.

The framers of the Constitution intended that we should have that power. Debate during the Constitutional Convention made it very clear that the delegates felt that the risk of economic and physical sacrifice during a war, and the serious legal and moral consequences that flow from the use of force against a foreign sovereign, were sufficiently grave that the elected representatives of the people should express their approval of such action.

The argument in favor of section 4(c) is very clear on two grounds. First, if we have the power to start with, we can carve out an exception and give the President the power to make war until we take that power back from him. And second, if we have the power under the Constitution to declare war by a simple majority, then we have the power under the Constitution to stop it by a simple majority.

We in the legislative branch have the power, so why do we not exercise it? What is wrong with using the power of the Constitution of the United States? I think it is time that we begin to exercise that power, time that we stood up and did what ought to be done. I believe that this resolution, and section 4(c) thereof, is a good piece of legislation, a piece of legislation that allows us to exercise our power responsibly. I believe the time to exercise it is now.

I strongly urge support of the committee bill and defeat of the various amendments to it.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. DU PONT. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentleman for yielding.

I commend the gentleman for his statement and particularly a point that I think is often ignored, overlooked or that is not stressed sufficiently. If Congress has the right to declare war by simple majority action, and the country can go to war when the President signs the bill, then Congress should have the right to undeclare war by a simple majority.

This should be possible without regard to the fact that we have other tools available to us, either through the appropriation process or otherwise. Those other tools are available to us now.

Mr. DU PONT. I think that is correct.

When the draftsmen of the Constitution gave us that power, they gave us that power by a simple majority, not by a two-thirds vote or the opportunity to override a veto, but by a simple majority. To gain authority under the Constitution to conduct a war, the President must have a majority vote of the Congress. To stop the conduct of a war, a majority vote of the Congress should also be sufficient.

Mr. BIESTER. Madam Chairman, will the gentleman yield?

Mr. DU PONT. I yield to the gentleman from Pennsylvania.

Mr. BIESTER. Madam Chairman, will the gentleman agree with my view that with respect to some of the substitutes we will consider this afternoon, the only vehicle that guarantees the majority and not two-thirds majority vote on the exercise of that power is the committee bill?

Mr. DU PONT. That is correct.

The CHAIRMAN. The time of the gentleman from Delaware has expired.

(On request of Mr. McCLOSKEY, and by unanimous consent, Mr. DU PONT was allowed to proceed for 2 additional minutes.)

Mr. McCLOSKEY. Madam Chairman, will the gentleman yield?

Mr. DU PONT. I yield to the gentleman from California.

Mr. McCLOSKEY. Madam Chairman, as I have listened to this debate I have begun to wonder whether we can improve on the Constitution, but I would like to ask the gentleman this question: Is there any precedent or authority as to whether or not a declaration of war as an act of the Congress cannot also be vetoed by the President? We seem to accept this concept of a majority vote to get us into a war but is there not a possibility that the President might veto a declaration of war?

Mr. DU PONT. I believe a declaration of war has never been vetoed in fact by the President, but it is my impression that such a veto would probably lie.

Mr. McCLOSKEY. Then we possibly cannot go to war without the same two-thirds majority to end the war as would be required under this resolution. Is that the gentleman's position?

Mr. DU PONT. No. My position is that for the legislative branch to declare a beginning of a war we need a simple majority to put us on record. The same should be true of ending a war.

Mr. McCLOSKEY. We would clearly need that, but could we go to war if the President vetoed the declaration and we did not have a two-thirds majority?

Mr. DU PONT. I would say to the gentleman we have been at war without a two-thirds majority so I do not know how to answer this question exactly.

Mr. McCLOSKEY. We were interested in this problem a few weeks ago on the Cambodian question on bombing and I wonder with all due respect to the committee whether the way to insure congressional control over this is not in each appropriation bill we pass, to include the provision that funds under it cannot be used for war for more than 30 days without congressional consent. I do not see how we can do it otherwise without providing for congressional action which would be subject to the Presidential veto power, and thus require a two-thirds majority.

The CHAIRMAN. The time of the gentleman from Delaware has again expired.

(At the request of Mr. BIESTER and by unanimous consent, Mr. DU PONT was allowed to speak for an additional 2 minutes).

Mr. BIESTER. Will the gentleman not agree, however, that the country should not go to general war without the approval of the majority of both Houses of Congress?

Mr. DU PONT. That is correct.

Mr. BIESTER. Therefore, what we are dealing with here is the impact of the necessitous act of a majority of the Congress rather than whether, in fact, we approach the problematic question of a Presidential veto in that event?

Mr. DU PONT. I think that is right. I would further say that the gentleman from California (Mr. GUBSER) made some comments a few moments ago about the President not having the power to go to war even for the first 120 days. I would say to the gentleman that I agree with him that the President does not have the power to launch offensive war in the first 120 days without the approval of the Congress.

Mr. WHALEN. Madam Chairman, will the gentleman yield?

Mr. DU PONT. I yield to the gentleman from Ohio (Mr. WHALEN).

Mr. WHALEN. Madam Chairman, the gentleman would concede that in the history of our country, our troops have been involved in numerous hostilities without a declaration of war. Has this ever been tested in the courts as to whether this is proper under the Constitution?

Mr. DU PONT. The Vietnam situation was tested in the courts a number of times; yes.

Mr. WHALEN. And determined that this was constitutional.

Mr. ZABLOCKI. Madam Chairman, I wonder if we could get approval to end debate on the Dennis amendment and all amendments thereto at 3 o'clock?

Madam Chairman, I ask unanimous consent that all debate on the Dennis amendment and all amendments thereto close at 3 o'clock p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. YOUNG of Florida. Madam Chairman, I object.

Mr. ZABLOCKI. Madam Chairman, I ask unanimous consent that all debate on the Dennis amendment in the nature of a substitute and all amendments thereto close at 3:15 o'clock p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. DENNIS. Madam Chairman, reserving the right to object, I just want to ask the chairman to state his request again.

Mr. ZABLOCKI. Madam Chairman, I ask unanimous consent that all debate end at 3:15 p.m. on the Dennis amendment in the nature of a substitute, on the substitute amendment for the Dennis amendment, and all amendments thereto.

The CHAIRMAN. The request is that all debate close at 3:15 p.m. on the amendment in the nature of a substitute offered by the gentleman from Indiana, Mr. DENNIS, on the substitute for that amendment and all amendments thereto.

Mr. DENNIS. Madam Chairman, reserving the right to object, are there further amendments pending to the Dennis substitute amendment?

The CHAIRMAN. There are some further amendments at the desk.

Mr. DENNIS. To the substitute. Are there amendments pending to the substitute?

The CHAIRMAN. There are.

Mr. DENNIS. May I inquire how many there are?

The CHAIRMAN. There is one amend-

ment to the amendment in the nature of a substitute.

Mr. FRELINGHUYSEN. Madam Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. WHITE. Madam Chairman, I rise to speak on behalf of the Bennett amendment.

Mr. SISK. Madam Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from California (Mr. SISK).

Mr. SISK. Madam Chairman, we have under consideration today House Joint Resolution 542, the war powers resolution of 1973 which would reassert the constitutionally defined and prescribed role of the Congress in the warmaking area by placing certain restraints on a President in the commitment of our Armed Forces.

Before us is one small step for the Congress to stand up and be counted today, but it may well be a giant stride forward for future Congresses.

This bill is not as strong as some of us would have liked, but it is that first small step. This body, over the past few years, has on a number of occasions seriously debated our involvement in Southeast Asia, and now we are taking some strong steps to eliminate the involvement. If such legislation as that before us were law today or yesterday, this Nation would not have been involved in the first place. If we were involved, it would have been done with congressional approval, which is the only method I feel is correct.

This resolution does not usurp the President's responsibilities as Commander in Chief of the Armed Forces—none of us would want that. But neither does it yield to that Office the power to change direction on foreign policy which is constitutionally vested in the Congress.

What we are insisting on, and I think rightfully so, is that before this Nation ever again commits American troops and money, that we, the Congress, either approve or disapprove the action. This does not have to be done by a declaration of war, but as a resolution either in support of or against a President's actions.

This and future Congresses are deliberative bodies, not rubberstamps. Passage of this piece of legislation could be an excellent example of this and restore at least to some degree the public's faith in our form of government.

Mr. WHITE. Madam Chairman, I rise in support of the Bennett substitute and against the Dennis amendment.

It seems to me that there are some very basic differences between these two amendments which must be focused on by this House. It has already been spoken of by the gentleman from Minnesota as to the enlargement of powers by the President at his discretion determining the emergency or necessity of involving our troops abroad. I think it is imperative, that if we are going to pass this particular amendment, that there be some definitions in the bill as to what is an emergency or a necessity. This, I think, is fundamental.

More than that, the Bennett amendment requires notice to Congress prior to any action of hostilities, as I understand it. In the Dennis amendment, the President can act on his own and get us into war and engage our forces without notice, and then give notice to the Congress. The Bennett amendment is consonant with constitutional powers of Congress to declare war by an overt act before hostilities can proceed, or continue. Under the Bennett amendment, there must be an overt act on the part of the Congress to engage in hostilities, as I understand it.

Under the Dennis amendment we have the very dangerous situation in which hostilities can commence without notice and will continue until the Congress, meaning both Houses of the Congress, shall negate the action of the President. We know there are all types of procedural delaying actions which can be taken in one House or another to thwart the desire of Congress to negate the President's action. One could have a filibuster in the Senate during a hostility in which our troops were engaged by the action of the President, which would continue because of such a procedural tie-up. Then contrary to the true will of Congress our country would become more deeply involved in a war.

In reading the Dennis amendment I really cannot understand how one could get into a little war. This is trying to assume one is going to engage a weaker enemy. Suppose we got into a hostility with a foreign power of strength at the President's discretion before notice to Congress or condonation by Congress. How could we suddenly disengage under such circumstances, after the President promulgated us into war?

I believe the Congress should look at the problem prior to that time. Congress, as the representative of the people, should determine whether or not an international situation is the type of hostility of necessity or emergency in which our troops should be engaged.

The gentleman from Indiana (Mr. DENNIS) should define his terms, as to necessity and emergency, before we pass his amendment. Congress itself should take overt action to say whether we should continue and engage in hostile action.

Therefore, I urge the defeat of the Dennis amendment and support of the Bennett substitute.

Mr. YOUNG of Florida. Madam Chairman, I move to strike the last word.

Madam Chairman, I take this time to discuss an amendment I hope to offer, if the parliamentary situation permits, and debate time is not cut off.

I want to commend and compliment the members of the committee who have presented this piece of legislation, for I know, through discussions with them and through attempting to draft legislation of my own, how difficult the task has been.

I have discussed my proposal with the members of the committee. I have provided in the RECORD, on page 21901, June 27, 1973, a copy of my proposal. I believe it does deserve consideration by the House, and not for 30 seconds or 1 minute only, or under a time limitation of that nature.

I have a change in the amendment that I would offer to the Dennis amendment if the Bennett substitute amendment is defeated, as I hope it will be. Then I will have the opportunity to present my amendment.

I propose a change in section 3, which was called to the attention of the committee by the leaders on both sides of the Committee on Foreign Affairs, relative to the language directing the President to call the Congress into session to consider the President's report on military action he might have taken.

My amendment will provide the language included in the committee bill, so there should be no constitutional question there.

I am concerned about the committee proposal, and I am concerned about all the other substitutes I have read, except the Dennis substitute, and I even have some questions about that, as to whether or not we are talking today about a war powers limitation measure or a war powers expansion bill. I am afraid this joint resolution is just that, an expansion of war powers.

If any Member will read it closely, I am satisfied he will find many ways in which one could argue it is in fact an expansion of the war powers of the President.

Back in our State of Florida at certain times of the year it is very dry, and fires rage out of control in the woodlands. Many times these raging infernos, which are out of control, were started innocently by someone striking a match to a few sheets of trash paper or a pile of leaves or clippings. What was intended to be a small brush fire then is turned into a raging inferno, exactly like Vietnam, where the small advisory action was turned into a small police action and then turned into a war out of control for a number of years.

The amendment I propose to offer will add that one very definite section, that none of the others have. That is a new section 4, which says:

> The President may not commit United States Armed Forces to hostilities in any case in which he is not exercising his constitutional authority or acting pursuant to a treaty obligation of the United States unless the Congress enacts a declaration of war or other specific authorization for the use of such forces.

Now, what about the President's constitutional authority? That has been determined by the courts. He has not only authority under the Constitution as the Commander in Chief of the armed services, but also as the Chief Executive Officer of the United States, and as early as 1863 in the Prize case, and as late as 1973 in the Mitchell against Laird case, the courts have held that the President does have certain constitutional authority to deploy U.S. troops in combat.

Madam Chairman, a second provision in my bill, after guaranteeing the constitutional right of the President, will deal with treaties, because we do have an obligation under our Constitution when treaties are in effect. Now, when treaties are in effect, I would then use language much like that proposed by the gentleman from Indiana (Mr. DENNIS) that if the President commits forces under a treaty, he then must report to

the Congress as soon as possible, at least within 24 hours, and the Congress within 120 days would have the opportunity to either reject or confirm the action of the President.

With respect to one of the discussions we have had as to whether or not inaction on the part of the Congress should mean legislative action, I speak to that point in this way: if the Congress does not act, then ratification or confirmation is assumed by the legislation. I agree with those who take the position that Congress cannot affect the outcome of a military conflict merely by sitting down and doing nothing. I believe the Congress should have the obligation to make a determination, and if, in fact, the President does commit troops to hostilities under a treaty commitment, he must immediately report to the Congress, and within 120 days the Congress would have an obligation to make a decision. If Congress agreed to the President's action, then the President would be required to report to Congress on the conduct of military activity at least every 6 months.

Mr. FINDLEY. Madam Chairman, will the gentleman yield?

Mr. YOUNG of Florida. I yield to the gentleman from Illinois.

Mr. FINDLEY. Madam Chairman, may I ask, has the gentleman found any treaty which obligates the United States to go to war without the approval of the Congress? I cannot think of any.

Mr. YOUNG of Florida. Madam Chairman, I do not cite any treaty in the legislation. I merely provide for that possibility and go further, using language much like that which is in the committee bill, and say that we do not abrogate any treaty requirement.

PARLIAMENTARY INQUIRY

Mr. ZABLOCKI. Madam Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ZABLOCKI. Madam Chairman, my parliamentary inquiry is this: As I understand it, there is an amendment in the nature of a substitute pending as offered by the gentleman from Indiana (Mr. DENNIS) and there is pending the substitute of the gentleman from Florida (Mr. BENNETT) and that there are several amendments to the Dennis substitute.

In order to bring the others in order, the disposition of the Bennett version would have to be acted upon first?

Is that not correct?

The CHAIRMAN. Any amendments which are offered to the Dennis amendment in the nature of a substitute will have to be voted upon before the substitute for the Dennis amendment in the nature of substitute is voted upon.

Mr. ZABLOCKI. In that case, Madam Chairman, I ask unanimous consent that all debate on the Bennett amendment terminate at 3 o'clock.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. DENNIS. Reserving the right to object, Madam Chairman, I would like to make a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

PARLIAMENTARY INQUIRY

Mr. DENNIS. Madam Chairman, I would appreciate the Chair stating again the order of vote. Did the Chair say that any pending amendments to my substitute must be disposed of before the Bennett substitute?

The CHAIRMAN. The gentleman is correct.

Mr. DENNIS. Madam Chairman, how many amendments, if I may ask, are there?

The CHAIRMAN. The Chair has no knowledge of that.

Mr. DENNIS. Madam Chairman, I mean those which have been offered.

The CHAIRMAN. Two amendments are at the desk.

Mr. DENNIS. Madam Chairman, further reserving the right to object, may I ask the gentleman from Wisconsin (Mr. ZABLOCKI) what was his request? Will the gentleman repeat his request,

Mr. ZABLOCKI. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Madam Chairman, it is my understanding that the gentleman from Indiana understandably wants to protect his position should there be amendments to his amendment, and that the amendment offered by the gentleman from Florida would have to be disposed of first.

Therefore, it is the intent of the gentleman from Wisconsin to limit time, if possible, on the Bennett amendment, and I have asked unanimous consent for that purpose.

Mr. DENNIS. On the Bennett amendment only?

Mr. ZABLOCKI. On the Bennett amendment only.

The CHAIRMAN. The Chair would like to point out that if the committee votes on the Bennett amendment and the Bennett amendment prevails, there will be no further opportunity to amend the Dennis amendment.

PARLIAMENTARY INQUIRY

Mr. FASCELL. Madam Chairman, I thought I had the parliamentary matter straight in my mind, but I would like to inquire. Do I understand correctly from the Chair that the present parliamentary situation we find ourselves in is that the gentleman from Indiana offered an amendment in the nature of a substitute and the gentleman from Florida offered a substitute?

The CHAIRMAN. To the gentleman's amendment in the nature of a substitute.

Mr. FASCELL. And the amendment would have to be perfected first before we could proceed to act on the substitute?

The CHAIRMAN. The committee must dispose of amendments that are offered to the Dennis amendment, if they are offered before the vote on the substitute.

Mr. FASCELL. I think that is the answer to my question, but I am not sure and I want to be absolutely clear.

Did I understand the Chair to say in response to the parliamentary inquiry that we would have to act on amendments to the amendment first before we could dispose of the substitute?

The CHAIRMAN. If there are amendments that are offered.

Mr. FASCELL. I thank the chairman.

Mr. ZABLOCKI. Madam Chairman, I withdraw my request.

The CHAIRMAN. The Chair recognizes the gentleman from Texas.

AMENDMENT OFFERED BY MR. DE LA GARZA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DENNIS

Mr. DE LA GARZA. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. DE LA GARZA to the amendment in the nature of a substitute offered by Mr. DENNIS: Amend the Dennis substitute by striking out the words "bill or" in section 3 of said substitute and insert therein the word "concurrent".

Mr. DE LA GARZA. Madam Chairman, first let me apologize to the majority and minority for not making available copies, as I have only one copy. It is a very simple one.

Where the gentleman provides in section 3 of his substitute "by bill or resolution," I simply say "by concurrent resolution."

First let me say I do not notice that the minority leader is here, but I very respectfully take exception to the words he uttered about courage and guts as having something to do with the legislation before the Congress.

I know this is a very serious constitutional confrontation between the Congress and the President. Certainly it is a most difficult constitutional question for us to be working on. I do not think the language as expressed by the minority leader should have any place in this debate.

Coming from Texas and from a Spanish-Mexican ancestry, I challenge anyone to question my courage or guts in any manner. My family has served this country, all who were able to serve have served. One died and several were wounded in action. I went twice to serve this country.

Because I am a Member of Congress with constitutional duties to my district and the people of my district I disagree with the fact that debate on any particular piece of legislation should challenge the motives or the courage or the lack of courage of anyone.

I will not yield at this time, but let me go on further to say this.

The question is very serious. I recognize that. I have offered this amendment, because my district probably had the most people serving in Vietnam per capita and probably the most dead in Vietnam, and yet they instructed me to steadfastly stand here and support the President of the United States. When the Presidency changed from Johnson to Nixon, they still insisted that I support the President.

And I did.

But now they say, "No more." They say, "The Congress, you as our Representative must have some say-so."

I say that the question of a veto of a bill or joint resolution is eminently derogatory to the power of the Congress to supersede the wishes of the President.

That is why I say I am in agreement

basically with what the gentleman from Indiana has been saying about a positive approach, but I change it to concurrent resolution.

I would like to ask the gentleman from Indiana another question.

The gentleman from Indiana and the distinguished minority leader were positive in their statements. So I ask why, then, should there be section 6 in the bill? Would the gentleman agree to strike out that section?

Mr. DENNIS. Madam Chairman, if the gentleman will yield, I am not sure which document the gentleman from Texas has in front of him.

Mr. DE LA GARZA. I do not have the mimeographed copy but, in any case, it is where it says also by inaction has approved what the President has done.

Mr. DENNIS. Madam Chairman, if the gentleman will yield further, in response to the inquiry of the gentleman from Texas, the bill that I believe the gentleman from Texas has in front of him originally had a section 6, which did say what the gentleman from Texas has said, that if there was inaction, it spelled out that did not terminate anything. I would say that that was obviously true, because it was only on a disapproving vote that the Executive action was terminated. So I took that out.

Mr. DE LA GARZA. The gentleman from Indiana has withdrawn that section?

Mr. DENNIS. That is correct.

Mr. DE LA GARZA. I then have an incomplete copy in front of me.

Mr. DENNIS. I am sorry about that.

Mr. DE LA GARZA. Madam Chairman, I commend the gentleman from Indiana for this. And then I ask if the gentleman would also agree with me on what I said about what the minority leader said in challenging the guts and the courage of certain Members?

Second, as a Member from the 15th District of Texas, I have the constitutional right to protect the interests of my people. Third, that with my Texas-Spanish ancestry I do not lack in courage or guts. And, fourth, if the gentleman from Indiana will agree to accept my amendment, which is a simple amendment, just changing it to concurrent resolution.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. DENNIS. Madam Chairman, I rise to oppose the amendment offered by the gentleman from Texas (Mr. DE LA GARZA).

Madam Chairman, first I wish to say that I have the greatest respect and regard for my friend, the gentleman from Texas, who just left the floor. I have less regard, however, for the amendment the gentleman has offered.

The amendment the gentleman from Texas has offered brings back the question we discussed here several times before, which simply seeks to substitute for the words "bill or resolution appropriate to the purpose," as describing the vote of approval or disapproval which we would take of the President's action, the words "concurrent resolution."

Concurrent resolution is what is in the committee bill. So we are back to the argument we plowed over before. The question is can you do it by concurrent resolution? Can you make a concurrent resolution have the binding force and effect of law? It is very doubtful in my opinion that you can.

Therefore, Madam Chairman, as I said before, it seems to me a mistake to lock that constitutional problem into this bill and give yourself no other option.

When you say "bill or resolution appropriate to the purpose," if the court some day wants to say a concurrent resolution is appropriate, then you can still use it, but if it turns out not to be appropriate, as it very well may be, you can use a joint resolution or a bill. We should remember that the whole constitutional scheme normally requires presentation to the President, and action by him, if you are going to make anything legally binding as a matter of law.

Mr. EVANS of Colorado. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I will yield to the gentleman in just one moment. Please permit me to finish my statement.

We should not forget that the Constitution provides that every order, resolution, or vote to which the concurrence of the House and the Senate may be necessary, shall be presented to the President of the United States.

As a matter of English that would include any kind of resolution. By practice we have not included concurrent resolutions normally, but the reason is that we have not normally used them for legislative purposes or for anything which was going to have the binding force and effect of law. We have used them for housekeeping matters, with which the President has no concern. This is not just my idea. There is no definitive determination on the subject, but it has been discussed.

Professor Corwin in his book on the Constitution says:

> In a report rendered by the Senate Judiciary Committee in 1897 it was shown that the word "necessary"—

In the clause I just read—

> has come in practice to refer to the necessity occasioned by the requirement of other provisions of the Constitution whereby every exercise of legislative powers involves the concurrence of the two Houses or, more briefly, "necessary" here means necessary if an order, resolution, or vote is to have the force of law.

I suppose we want this one to have the force of law. That is why I am skeptical that we can do it by a concurrent resolution, but, if we can, the form of my substitute would still permit it. What I object to is locking ourselves into that box.

Mr. EVANS of Colorado. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. I thank the distinguished gentleman for yielding.

Does not the question of the constitutionality and the effectiveness of a joint resolution standing by itself disappear—whether it is the gentleman's substitute or the committee resolution which refers to a concurrent resolution—if it is passed by a majority of the House and a majority of the Senate, sent to the President, vetoed by the President, and then the veto is overridden so that it thereby becomes a law, which law just simply refers to action in the future by means of a concurrent resolution? I think under those circumstances there should be no question about it being a constitutional negation of what the President may do by a simple concurrent resolution, because it has its roots in something that has been previously passed and passed over the veto of the President.

Does the gentleman not agree?

Mr. DENNIS. I do not know whether I completely understand the gentleman. I suppose if we pass something over a veto, it becomes a law. That is normal procedure.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ECKHARDT, and by unanimous consent, Mr. DENNIS was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Texas.

Mr. ECKHARDT. I think the gentleman from Colorado is talking about what is generally called a legislative veto, and it is based upon the theory that the previous act, having delegated to Congress authority to rescind, constitutes legislative authority to act in that manner without the veto.

I have serious doubts about that, and I should like to have the gentleman's comments on it. If the original act is passed as a bill, and if what is envisaged is concurrent action of both Houses changing or rescinding policy of the original act, it seems to me that this is indistinguishable from a bill of the nature that the Constitution is referring to when it states that any concurrence of the two bodies must be subjected to Presidential veto.

Mr. DENNIS. Of course, let us say we pass the bill here. I thought about that. The bill says that when we take this action voting a resolution of disapproval of some kind, certain actions follow. The President must pull the troops out. This President signs that bill and it is the law. Maybe we do not have to have a veto under those circumstances, but I am skeptical of that situation. I doubt that we can arrive at that result because of our basic constitutional scheme which does require presentation to the executive. But if we can, well and good, we can still do it under my proposal but under the committee bill we assume that this very difficult constitutional question is going our way.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

(On request of Mr. DU PONT, and by unanimous consent, Mr. DENNIS was allowed to proceed for 3 additional minutes.)

Mr. DU PONT. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Delaware.

Mr. DU PONT. If I might ask the gentleman a question, does he not believe that the either/or provision of his substitute and the Whalen-Buchanan amend-

ment will lead to playing a political game with war powers? If the Foreign Affairs Committee is controlled by a majority of a different party than the President, there may be a tendency to make the resolution concurrent. If they are the same, there may be the tendency to make it joint. It seems to me an either/or approach is going to inject a frivolous possibility into deciding whether or not we are going to engage in a military campaign.

Mr. DENNIS. I do not really think that is a serious problem; no. I say again we have a very difficult constitutional question here before us in trying to legislate in the field of war powers at all. I simply cannot understand why the gentleman wants to further complicate that field by writing into the statute unnecessarily another subordinate but equally difficult constitutional problem. Let us take one thing at a time.

Mr. DU PONT. If the gentleman will yield further, it seems to me just the opposite is true. What I am trying to do is get rid of the element of chance that will lead a Foreign Affairs Committee in the future to try to work the situation to its own political advantage. Let us have a clear proposition here.

Mr. DENNIS. What the gentleman is trying to do is to have a conflict between the executive and the legislative. You assume that the executive is going to try to veto anything we do. I do not know. Perhaps some court is going to have to decide this question some day, but I do not make your assumption. I think if we pass a resolution saying to the President of the United States he has got to stop this, he would stop it. I think he would. And if he would not, then is the time to talk about cutting off funds or taking other drastic action, if he is ignoring the statutes.

Mr. YOUNG of Florida. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Madam Chairman, the gentleman has made his argument very well in favor of the position he has taken. In support of that position, I would like to call his attention to Jefferson's Manual and Rules of the House which state:

> A concurrent resolution is binding on neither House until agreed to by both. Since it is not legislative in nature, it is not sent to the President for approval.

Then in Cannon's Precedents of the House, volume 7, page 150, it states:

> A concurrent resolution is without effect beyond the confines of the Capitol.

I think the gentleman's arguments against use of a concurrent resolution in this regard are very well founded.

Mr. FRASER. Madam Chairman, I move to strike the requisite number of words.

I wonder of the gentleman from Indiana would be willing to pursue this question a moment more.

Mr. DENNIS. I will be happy to discuss the matter with the gentleman.

Mr. FRASER. Let us suppose the Congress enacted a law that said that when the United States enters into a treaty of mutual security with another nation and when that other nation is attacked, that the President then has the authority to use U.S. forces in defense of that other country without further congressional approval. In other words we, in effect, build into the treaty the authority to use force in support of the treaty commitments. But then supposing that same law goes on to say, "provided however, that this authority shall expire or terminate upon the passage of a concurrent resolution by the Congress." My question to the gentleman under those circumstances is this.

Mr. DENNIS. If the gentleman will yield, what goes on to say that?

Mr. FRASER. Assume we pass a law that says when we enact a mutual security treaty the President shall have the authority to use force without coming to Congress for more specific authority.

Then, we go on to say in the same law that Congress by concurrent resolution may withdraw that power at any time. In view of the gentleman from Indiana, would that provision calling for the withdrawal of authority by concurrent resolution be appropriate and enforceable?

Mr. DENNIS. The gentleman, of course, as he well knows, is asking me some deep constitutional law questions to which there really is not much law, or at least as far as I know.

My view has always been that Congress could, by taking action subsequent to a treaty, change the treaty authority, because we granted it and I think we can change it. A treaty is the law of the land and I think we can change the law.

My feeling also would be that we would probably have to do it by an act of Congress, but I have not researched the subject the gentleman is discussing.

Mr. FRASER. Madam Chairman, let me pursue that, if I may. In the Gulf of Tonkin resolution, it was provided that the resolution could be rescinded by a concurrent resolution. Now, the Gulf of Tonkin resolution did afford a basis on which the President could use force. In the view of the gentleman from Indiana, was that provision in the Gulf of Tonkin resolution providing for its repeal by concurrent resolution constitutional?

Mr. DENNIS. As the gentleman knows, the question was never tested.

Mr. FRASER. I am asking him to review the issue.

Mr. DENNIS. I frankly do not know the answer to that queston. What I am saying and have said again and again, is that I do not think the gentleman knows either, but he is assuming and his cohorts on the committee all seem to be assuming that they do know the answer, that they are bound to be right, and that therefore it is safe to write it into law.

I say that is a mistake, because nobody can tell whether the committee is right or not, and it is locking itself in there and putting a constitutional question in the bill which does not have to be there.

Mr. FRASER. Madam Chairman, let me make this observation: Where the Congress by law gives authority, it can at the same time say that the authority may be rescinded by concurrent resolution. That is an integral part of the initial grant of authority, that it can terminate the authority in the nature of a condition subsequent.

We had a case where the President assigned four transport planes to the Congo in support of the United Nations action. He did not come to Congress. I assume the President probably argued that his authority came from the United Nations Participation Act, or from the action of the Security Council.

My point is, that when we pass the kind of bill the committee has recommended, in effect we are saying that these kinds of statutory grants from which there may be inferred an authority to act, are to be limited thereafter by the provision that a concurrent resolution may withdraw the authority, referring specifically to any implied authority.

I want to say that I think this is a sufficiently arguable proposition so that we ought to put it into the bill. Let us assume that the court holds it unconstitutional. We have lost nothing, because we always retain the authority to act by law. When we propose a joint resolution, which is the same as a law or a bill, we add nothing to the power we already have under the Constitution. In that case, it is just simply restating a power Congress already has.

Mr. BUCHANAN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I would like to have the attention of the gentleman from Minnesota (Mr. FRASER). As he well knows, I am a layman and not a distinguished attorney such as himself or the gentleman from Indiana.

However, is the gentleman saying, as the gentleman from Delaware has earlier said that what we are in fact doing is saying to the President that under certain emergency conditions we are delegating to him certain powers to act?

Mr. FRASER. Not under this bill. This bill provides the President with no authority to act which he does not have in its absence.

Mr. ECKHARDT. Then how can a concurrent resolution prevail?

Mr. FRASER. Because, when the President acts, what he will do is cite other acts of Congress such as the SEATO Treaty, the Gulf of Tonkin resolution, the United Nations Participation Act or whatever. Whatever he gets the Nation into, he then infers authority to act from some prior congressional actions or treaty. What we are doing is coming along and saying, "If you do that, let it be understood that any such inference of authority is explicitly subject to the concurrent resolution which terminates it."

Mr. BUCHANAN. I do not know whether the gentleman is correct. As he has said, the Court would have to make that determination.

I want to underline the fact that while the committee measure does put the Congress in an inflexible position of prescribing a concurrent resolution to cut off Presidential action, the Dennis substitute does not take that inflexible position, nor does it prohibit a future Congress, if in its judgment the gentleman's view is cor-

rect and a concurrent resolution should be tried, from doing so. It could do so, under the Dennis substitute.

I want to lay to rest the idea that somehow the Dennis substitute prohibits action by the Congress by concurrent resolution to attempt to cut off the conflict, because it does not. It uses the language "a resolution appropriate to the purpose."

Like the gentleman, I would be happy to try the concurrent resolution approach, to see if the courts would let it prevail. The Dennis substitute permits such an effort, as it is written.

Mr. FRASER. I would say to the gentleman that where the language uses the phrase "appropriate resolution" I would think that any court would construe that to require a bill or a joint resolution, because to argue for a concurrent resolution I believe one would have to say so explicitly.

Mr. BUCHANAN. We are here making legislative history. As someone who is a cosponsor of the Dennis proposal and a strong supporter of the amendment, I am saying I believe the language makes a concurrent resolution possible by the Congress.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Indiana.

Mr. DENNIS. I should like to say to my colleague and cosponsor that when we say it is a resolution appropriate to the purpose it means any resolution which is found to be and is in fact appropriate to the purpose.

Mr. FRASER. Would that include a resolution by one House alone? Would that be appropriate?

Mr. ECKHARDT. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Texas.

Mr. ECKHARDT. I wonder if the gentleman is troubled by the same point I am. The gentleman from Minnesota (Mr. FRASER) has described a measure which grants authority and makes a condition subsequent that permits a concurrent resolution to withdraw that authority. If that be true, that grant of authority must be the grant of the war power authority.

Mr. BUCHANAN. I believe the gentleman is correct.

Mr. ECKHARDT. Yet he says it is not.

Mr. BUCHANAN. There is clearly a delegation for a 120-day period to the President of the congressional warmaking authority under the committee measure, and that is in complete conflict with the provisions of section 8, which says we are not doing it.

Mr. ECKHARDT. Madam Chairman, will the gentleman yield further?

Mr. BUCHANAN. I yield further.

Mr. ECKHARDT. If, therefore, the original act reserves a method of rescinding war authority by concurrent resolution it must have originally granted war authority, as I see it.

Mr. BUCHANAN. I believe it clearly has done so.

Mr. FRASER. Madam Chairman, will the gentleman yield on that point?

Mr. BUCHANAN. I yield to the gentleman from Minnesota.

Mr. FRASER. Let me say, first, there is a provision which I authored, so I am familiar with it, which says that absolutely nothing in the measure gives the President authority to act that he did not have before.

I am talking, in effect, about amending any other act of this Congress or any other treaty by the provision that termination may occur by concurrent resolution. I am not talking about this being the source of the authority. I am talking about the concurrent provision being in effect an amendment to any other legislative enactment from which the President infers the power to act.

I want the record to be clear on that.

Mr. BUCHANAN. The gentleman is an attorney, and I am not, but I might say this really is a unique experiment. What we are saying is that an act of Congress, by joint resolution or bill, can be revoked by a concurrent resolution of the Congress, regardless of the President's position, whereas at the outset, had this been the case, it would have required a two-thirds vote by the Congress to accomplish the purpose.

We are saying, after the fact and subsequently, a mere majority vote of the Congress can do it in the committee bill, if the interpretation of the gentleman from Minnesota is correct.

Mr. FINDLEY. Madam Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. DE LA GARZA).

I do so with some trepidation, because I would not want to leave the impression that I feel the amendment, if accepted, will make the Dennis substitute a good proposition. Quite to the contrary, I feel it would still be a very serious mistake for this body to embrace other provisions of the Dennis substitute.

But nevertheless the amendment offered by the gentleman from Texas (Mr. DE LA GARZA) certainly is an improvement. It does replace with a very precise term, "concurrent resolution" the ambiguity and the uncertainty of the type of resolution that would be required to terminate hostilities.

I would also make the point that there is judicial notice of the use of the concurrent resolution as a means by which the Congress can terminate, or reverse the action of the executive branch. I call attention to the 1941 case before the Supreme Court, the case of Sibbach against Wilson & Co., and the issue was the question of whether or not the use of a concurrent resolution in the statutes as means by the Congress can negate executive action relating to rules of civil procedure for the district courts was constitutional. And the court stated as follows:

> Moreover, in accordance with the Act, the rules were submitted to the Congress so that that body might examine them and veto their going into effect if contrary to the policy of the legislature.
>
> The value of the reservation of the power to examine proposed rules, laws and regulations before they become effective is well understood by Congress. It is frequently, as here, employed to make sure that the action under the delegation squares with the Congressional purpose . . . That no adverse action was taken by Congress indicated, at lease, that no transgression of legislative policy was found.

At this point I stop quoting from the decision of the U.S. Supreme Court, which I think certainly upholds the constitutionality of the use of a similar use of a concurrent resolution. So far as I know, it is the only circumstance in which the Supreme Court has seen fit to rule on the question of using the concurrent resolution. But despite the fact that only one test case has occurred may have occurred many laws have provided either for the use of a concurrent resolution to establish the right of Congress to negate or reverse an executive action or the right of Congress to employ a simple resolution of one House which would have that same effect.

So, Madam Chairman, I think this amendment is definitely an improvement in the Dennis bill, but I would remind my colleagues that the language at the top of page 2 is an unconscionable conveyance to the President of the right to define the "war powers" of the President. It would give statutory sanction to such definition.

My colleague, the gentleman from Michigan (Mr. FRASER) very eloquently pointed out the dangers of letting by statute the President decide on his own what emergencies are sufficient to justify his use of the military force on foreign territory.

Now, this question also remains: Who is going to decide under the terms of the Dennis substitute what type of resolution is appropriate? The language of the bill does not suggest any answer to the question, but I think in all practicality we must assume that when the time comes, the President is going to be the one who decides what is appropriate. And he is going to decide on the form of resolution which is most to his advantage. Of course, the form most to his advantage is the joint resolution approach which would enable him to veto the action of the House and therefore be able to sustain his position with the support of only one-third of one body.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. FINDLEY. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, in addition to the unusual grant of authority to the executive branch, for the first time in history as in the Dennis substitute, what does the gentleman from Illinois think about the provisions of paragraph 3 which put a restriction or attempt to put a restriction of time upon the Congress?

Of course, we all know some Member is going to have to introduce a bill or a resolution or take some action, but what happens if, just by some chance, no Member introduces a bill, and the Congress does not act up or down in the courageous manner anticipated by previous speakers?

Mr. FINDLEY. Madam Chairman, I presume that the authority under which the Congress could act would expire?

Mr. FASCELL. At least the inference is there that if the Congress did not act in that period of time, the Congress would forfeit the right to act, which of course is impossible.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. DE LA GARZA), to the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The amendment to the amendment in the nature of a substitute was rejected.

AMENDMENT OFFERED BY MR. REGULA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DENNIS

Mr. REGULA. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. REGULA to the amendment in the nature of a substitute offered by Mr. DENNIS:

Insert at the end of section 5 a new section as follows and renumber the remaining sections:

SEC. 6. (a) Any bill or resolution introduced pursuant to and under the provisions of section 3 or section 4 of this act, either approving or disapproving the action of the President shall, if cosponsored by one-third or more of the total number of Members of the House of Congress in which such bill or resolution originates be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays; and any such bill or resolution referred to a committee after having passed one House of Congress shall be considered reported from such committee within one day after it is referred to such committee, unless the Members of the House referring it to committee shall otherwise determine by yeas and nays.

(b) Any bill or resolution reported pursuant to subsection (a) shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

Mr. REGULA. Madam Chairman, the distinguished gentleman from New York (Mr. BINGHAM) mentioned earlier that under the provisions of the various bills Congress could be frustrated by having no machinery to provide for action. The objective of my amendment is to provide some machinery to get action and get this issue before this body.

On May 21, 1973, I introduced legislation designed to delineate and clarify once and for all, the warmaking powers of the executive and legislative branches of our Government. That legislation is very nearly identical to my colleague, Mr. DENNIS' amendment in the nature of a substitute, save for a section that sets forth the procedures whereby action by both Houses of the Congress, either in approval or disapproval of Presidential warmaking action can be moved through the Congress in an expeditious fashion. This procedure should be enacted now rather than in the heat of controversy in the event this legislation is used.

House Joint Resolution 542 has serious defects which my colleague's amendment would correct, but unlike my colleague's amendment, House Joint Resolution 542 does contain language in sections 5 and 6 that stipulate congressional priority procedure for consideration of a relevant bill or resolution introduced either in approval or disapproval of Presidential action.

I believe that such procedures are essential unless we want, like the Cheshire cat in Lewis Carrol's "Alice in Wonderland" to say that the mirror image of our inaction in fact is affirmative action.

The procedures spelled out in House Joint Resolution 542 are needlessly complex whereas, in my amendment, they are simple and straightforward.

My amendment provides that any bill or resolution in approval or disapproval of Presidential action, if cosponsored by one-third or more of the Members of the House in which it is introduced is automatically considered reported to the floor 1 day following this introduction. The Members of the House may, by vote, determine otherwise. Further, once having passed one House the bill or resolution is automatically considered reported to the floor of the other House within 1 day after it has been referred to a committee of that House. Again, the Members of that House may determine otherwise by a vote. Subsection (b) of my amendment provides that the bill or resolution immediately becomes the pending business of the House to which it is reported. Further, I require that it be voted upon within 3 days after it has been reported. Again, the House which is considering it may determine otherwise by a vote.

So essentially the controls remain with the House dealing with this matter.

Madam Chairman, it seems to me that these provisions are straightforward and are not subject to varied interpretations. The antifilibuster provision of House Joint Resolution 542 is, by contrast, perplexingly complex. One must be a mathematician versed in the law of probability to determine whether or not a bill or resolution falls within the congressional priorities spelled out in section 5(a) and 7.

Of course, Madam Chairman, I would support the amendment offered by the gentleman from Indiana (Mr. DENNIS) in the nature of a substitute. I think that it is essential that Congress take a positive action in the event this matter comes before it, but I believe that my amendment would strengthen and delineate the procedures that are necessary to deal with matters of this serious nature.

The approach taken by House Joint Resolution 542 is a negative one. The substitute amendment will correct that. House Joint Resolution 542 would, pursuant to sections 4 (b) and (c) force the President to act as a result of congressional inaction.

There is no argument that the power to declare war—requiring an affirmative act—rests with the Congress and only with the Congress. Section 4 would, however, deprive the President of rightfully exercising the power he constitutionally shares with the Congress, that is the power to make war, whenever the 535 Members of the Congress failed to act or simply refrained from acting.

A war powers bill has been necessitated by the growth of powers claimed as inherent in the Executive under article II, section 2, of the Constitution. Congress, by its inaction, can take a good share of the blame for that.

Are we now to sanction congressional inaction by changing the rules and calling that which we failed to do implied censure?

I do not believe that we can by inaction do that which the framers of our Constitution said we must affirmatively do.

Article I, section 9 of the Constitution gives Congress the power to declare war as well as such related functions as raising and supporting armies and providing and maintaining navies. Each enumerated authority requires an affirmative act. While we are finally, by this legislation, clarifying the gray area between the explicit grant of war powers to the President under article II, section 2—which makes the President Commander in Chief of our Armed Forces—and article I, section 9, let us not muddy the waters by saying that whenever the Congress does not act, the negative shall be implied.

The substitute amendment offered by Mr. DENNIS does require the Congress to act either in approval or disapproval of the President's action. There is no room for an inference to be drawn. Either we approve or we do not and we say so.

The argument that the concurrent resolution is not constitutionally effective is a spurious argument.

The U.S. Constitution section VII, article 1 says that for a concurrent resolution to have legislative effect, the President must approve it or veto it. Congress can override the veto. The framers of our Constitution contemplated and provided for the use of a concurrent resolution.

But, if the President ignores a concurrent resolution by both Houses of the Congress, it has absolutely no legislative effect. In theory, we could have a situation in which no one in the U.S. Government would have the responsibility of handling a national security crisis under section 4(B) of House Joint Resolution 542. The Constitution is clear. The veto is built into the constitutional scheme of things. The only way that a concurrent resolution can have legislative effect is through the established legislative process.

House Joint Resolution 542 does not provide for contingencies when the President has been directed to cease hostilities and disengage forces. The substitute introduced by my colleague from Indiana does provide for contingencies in that event. It gives him that authority, at least.

Section 5 says that when the President is required to disengage, he does it with due regard to the safety of the forces of the United States, the necessary defense and protection of the United States, the safety of other nationals, and the reasonable safety of allies and friendly nationals and troops.

Mr. MAILLIARD. Madam Chairman, will the gentleman yield?

Mr. REGULA. I yield to the gentleman from California.

Mr. MAILLIARD. Madam Chairman, I thank the gentleman for yielding. I would just say, speaking for myself, that I would strongly support the amendment offered by the gentleman from Ohio, because I thought that one of the defects

in the Dennis amendment was the lack of a procedure that would guarantee that filibustering could not occur, or that a committee that may not have the same view that the House as a whole has, could button up a measure that might disapprove the President's action. I think this considerably improves the Dennis amendment.

Mr. REGULA. Madam Chairman, I thank the gentleman from California, and I emphasize again that when the matter is before the Congress is not the time to decide on procedural questions, but that it should be done as an overall package.

Mr. BINGHAM. Madam Chairman, I move to strike the last word.

Madam Chairman, I agree with the distinguished ranking minority member of the committee that the proposal made by the gentleman from Ohio would improve and strengthen the Dennis amendment. However, I would point out that the provisions in this amendment are not as well drawn and not as thoroughly drawn as similar provisions in the committee bill. This illustrates some of the difficulties of trying to rewrite on the floor legislation which has been carefully considered in committee.

The provisions in the gentleman's amendments are, I believe, identical with the provisions on this subject in the Javits bill in the other body; they do not provide for adequate committee consideration. They would short circuit the committee process in the House. For that reason I think these changes, while they would guarantee to some extent against a filibuster, they would not provide adequate consideration for matters of this importance. I will vote for the amendment offered by the gentleman from Ohio (Mr. REGULA) because I think it does represent an improvement, but it certainly does not come as close to meeting the problem of priority procedures as the committee bill.

I will certainly vote against the amendment offered by the gentleman from Indiana (Mr. DENNIS) in the nature of a substitute, when the time comes to vote on that, for reasons that have been previously explained.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. BINGHAM. I yield to the gentleman from Florida.

Mr. FASCELL. Will the gentleman from New York comment on the difference in the provisions whereby in the committee bill one person who sets out to get priority action in the House may do so, and which also preserves the right of the committee. Whereas under the pending amendment it would take one-third of the House in order to achieve priority?

Mr. BINGHAM. The gentleman from Florida has stated it so well there is no need for me to repeat it.

Mr. DENNIS. Madam Chairman, I rise in opposition to the amendment, and I move to strike the requisite number of words.

Madam Chairman and members of the committee, I appreciate my colleague, the gentleman from Ohio, in his support of the general thrust of my substitute amendment. However, I oppose the amendment offered by the gentleman from Ohio not because it is ill intended, because the idea is to make sure that we get a prompt decision on this matter when the time to vote comes up on approving or disapproving of an action of the President, but because I think it is unnecessary, and unduly complicates the situation. In illustration of that, my two distinguished colleagues, the gentleman from Florida and the gentleman from New York, have pointed out two fallacies in the proposal. There are other similar provisions in the committee bill which the committee prefers, which my friend, the gentleman from Ohio, does not prefer. All of these procedural matters need consideration, and none of them are foolproof, but under the gentleman's proposal a certain number of people have to sponsor the proposal, and a majority of the House can set the whole procedure aside, if I understand the proposal.

What I tried to do was to draw a relatively simple bill. I do not think we can assume that the Congress is not going to obey its own statute. If the Members pass my amendment, my substitute, and it becomes law, we have a positive duty to vote within a certain length of time. So does the other body. It is a legal obligation. In due course and with plenty of time to consider it, rather than on the floor when we are considering other things, but well before the time would come up when we would have to use it, I would assume that our distinguished Committee on Rules, seeing this law on the book, will sit down and come up with a rule for this body to adopt which will implement the requirement to vote within 90 days. I say let us leave it to them at that time. Let us not try to write those procedural matters here in the statute on the floor.

Mr. KAZEN. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

The gentleman has just said that he had a time frame within which the House would act, and I think that under his bill the House has 60 days—the Congress has 60 days—am I correct?

Mr. DENNIS. Ninety days on the first occasion and 30 days on the subsequent reports.

Mr. KAZEN. All right. Let me ask my distinguished friend this: Suppose the Congress does not act within that time frame; then what happens?

Mr. DENNIS. I say again to the gentleman I am assuming—and I think I have a right to—that if we pass a law saying we must act, we will act, but, of course, obviously if we do not act, nothing happens.

Mr. KAZEN. The war continues?

Mr. DENNIS. That is right.

Mr. KAZEN. Why does not the gentleman spell that out in the bill?

Mr. DENNIS. I did at first, and then some of my colleagues objected. They said that it was self-evident, and I agreed with them, so I took it out.

Mr. KAZEN. In other words, the difference in that particular item between the gentleman's proposal and the committee's proposal is that if in one instance the Congress does not act, the war ends; in the other, if the Congress does not act, the war continues. I submit to the gentleman that under his proposition he is enlarging the powers of the President.

Mr. DENNIS. The gentleman is so right about the difference. I say if we want to stop a war, we ought to have the courage to vote it up. We should not determine national policy just by sitting around here on these benches and doing nothing. That is the trouble with the committee bill. That is what we were arguing about before.

Mr. ZABLOCKI. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. I thank the gentleman for yielding.

By the same token, should not we have the courage to affirm a commitment of troops abroad if we agree with the President?

Mr. DENNIS. Under my bill we have to do one or the other. What is wrong with that? Do it, up or down.

Mr. ZABLOCKI. Madam Chairman, will the gentleman yield further?

Mr. DENNIS. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. I thank the gentleman for yielding.

Should not we have the courage today to vote our convictions and responsibilities that the war powers be returned to balance between the executive branch and the Congress?

Mr. DENNIS. I think it is a mistake to decide these things by inaction.

Mr. BURGENER. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from California.

Mr. BURGENER. I thank the gentleman for yielding.

In the gentleman's research on this matter of declaring war, am I correct in my assumption that the last declaration was in 1941?

Mr. DENNIS. I believe so.

Mr. BURGENER. In that case I believe the President asked the Congress to declare war, and the vote was virtually unanimous. Does anyone recall the document? What was the document that was used by the Congress?

Mr. WYDLER. Madam Chairman, will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from New York.

Mr. WYDLER. I thank the gentleman for yielding.

I just checked with the Parliamentarian of the House within the last half hour. It was done by joint resolution of the Congress and required a Presidential signature.

Mr. DENNIS. I thank the gentleman.

Mr. BUCHANAN. Madam Chairman, I rise in support of the amendment.

Madam Chairman, I think the gentleman from Ohio brought forth a good amendment, and I urge support of his amendment. I do not know whether we can bind a future Congress to ful-

fill sections 5, 6, and 7 of the committee bill, or to fulfill the procedures which the gentleman from Ohio set up in this amendment. But I believe we can and I think we should try. I would point out if one can set up these procedures and bind a future Congress by such procedures one can also say to that future Congress that it must act. It is the same thing. And the Dennis resolution says Congress must act. It says if Congress does not act Congress is disobeying the law. If Congress will disobey the law in not acting as the Dennis proposal requires, then Congress can just as well disobey the law in not going through the procedure the gentleman from Ohio now prescribes or that the committee bill requires and we will be in the same basic position of those procedures being disregarded.

But I say if we can mandate congressional action as to procedures and mandate them in a future Congress, and I believe we can, then the procedures of the gentleman from Ohio would be valid and what the gentleman from Indiana is doing to mandate the Congress to act to approve or disapprove Presidential action is valid as well.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Indiana.

Mr. DENNIS. Madam Chairman, I would like to say I concur completely with my friend, the gentleman from Alabama, as to the fact that this proposed law, the substitute, definitely requires action, and as I said before I have assumed that we are not going to disobey our own law. I completely agree with the gentleman in what he says about the procedural proposition. If we put it in I assume we will obey that, too. It is the same thing. The only thing on which I do not agree with my friend is on the proposition that we ought to write procedure here.

Mr. BUCHANAN. Heaven help the country if Congress ever practices civil disobedience.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from New York.

Mr. WOLFF. What will happen if an impasse occurs so the Congress could not act?

Mr. BUCHANAN. The Congress is mandated to act.

Mr. WOLFF. If there is a disagreement between the House and the Senate?

Mr. BUCHANAN. Then that disagreement would have to be resolved.

Mr. WOLFF. But by what means?

Mr. BUCHANAN. By the same means as at present, in conference or in consultation, as we do on appropriation bills on which we must also act if the Government is to stay in business.

Mr. DU PONT. Madam Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Delaware.

Mr. DU PONT. I believe the gentleman from New York has made a very important point because the gentleman's language requires the House to act to obey the law and requires the Senate to act to obey the law, but it does not require the conference committee to act to obey the law. We have seen the situation before that the House and Senate have been unable to act.

Mr. BUCHANAN. I would say to my friend, the gentleman, the rules of the House so provide and that is our clear intention. I would say the gentleman should have faith. If he has faith as a grain of mustard seed, he can move mountains. I say also to the gentleman that he should store up treasures in heaven and not on earth. He can do so by having faith.

Mr. DU PONT. If the gentleman will yield, I have been here only 3 years but I have lost my faith already when it comes to prompt action by the Congress.

Mr. ANDERSON of Illinois. Madam Chairman, I move to strike the last word.

Madam Chairman, I think that the debate this afternoon has been very useful in outlining some of the difficulties with which we are confronted when we try to legislate in an area, an admitted gray area involving the respective constitutional powers of the President and the Congress.

Let me assure the gentleman from Indiana at the outset, a Member of this body for whom I have the very highest regard and affection and respect, that ever since he unveiled his proposal before the Rules Committee and asked for a rule that would specifically make it in order, I have tried as best I can and as conscientiously as I can to consider his proposal, and I applaud him on the amount of work that he has done and on the very conscientious study that he has made of this very grave and important issue.

I also realize that the very heart and kernel and core of his proposal is in the section, I believe 3 under his latest version, that would require affirmative action by the Congress with respect to either the approval or disapproval of the deployment of troops abroad.

I support him in that principle, and it is only because I believe that another opportunity will be offered this body in an amendment to be offered by the gentleman from Ohio (Mr. WHALEN) and the gentleman from Alabama (Mr. BUCHANAN) and I am not going to support his substitute. If he had stopped with that particular principle, I would have supported his substitute on the floor this afternoon.

However, it seems to me that he has gone much further than that, and as others have pointed out, in the language that he has included in section 1, in essence what we have are some self-canceling clauses.

First of all, it states that troops shall not be committed except with a declaration of war on an attack upon the United States without the prior specific approval of the Congress. Then, he goes on to cancel that out by saying that the President in his own discretion, in his sole discretion, may determine that an emergency or necessity requires the commitment of those troops for up to 90 days under the language of his amendment. It seems to me that that represents an enlargement of the warmaking power of the President to which I would not want to acquiesce by voting for his substitute amendment.

The other thing which troubles me about his substitute is in section 5 of the present version of his bill, where he provides that if Congress does provide by resolution or appropriate act for the withdrawal of troops or termination of hostilities, that—

> The termination shall be consistent, among other things, with the necessary defense and protection of the United States, its territories and possessions.

What that means to me is this: That after Congress has spoken, after we have enacted a bill or a resolution saying that the troops shall be withdrawn, the President could still say, "No, I am not going to withdraw those troops because that would not be consistent with the necessary defense and protection of the United States."

We would be right back where we started from. We would be relitigating the very question which we thought we had determined by the adoption of the resolution.

Finally, I am also troubled by the language in the substitute in section 4, which provides, as far as I can interpret it, a war by the installment plan, that every 6 months the President shall report to the Congress and that within 30 days after the receipt of each such report, once again we have to gear up the machinery and go into this whole process by appropriate bill or resolution ratifying, approving, confirming and authorizing the continuation of the effort. I think that is the area where we would be tying the hands of a President. Once we have decided and approved, we have ample opportunity, I think, through the appropriations process to manifest our continued support or lack of support of that initial authorization.

However, to say that we will repeatedly, every 6 months, go through this identical process, I think would be very divisive within the country and be a tremendous strain on the constitutional tie of cooperation that ought to exist between the President and Congress.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(By unanimous consent Mr. ANDERSON of Illinois was allowed to proceed for an additional 2 minutes.)

Mr. ANDERSON of Illinois. Very respectfully, therefore, I suggest that, saluting as I do what I understand to be the central purpose of the gentleman's substitute amendment, I think he has so encumbered it with these other provisions and this additional language that I would prefer that it be voted down and that we wait for an appropriate occasion in the debate this afternoon to accept an amendment which would comply and put the Congress on record as mandating the necessary or affirmative action by this Congress in the event of the deployment of troops abroad.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, I

thank the gentleman for yielding to me. The gentleman is a Member for whom I have the greatest regard.

I would like to discuss with him for a moment a number of his objections. In the first place, as to section 1, the first thing section 1 says is that normally the Congress should give prior authority before the Executive acts.

Then it simply recognizes the idea, that there are emergency situations where that may not be possible.

Mr. ANDERSON of Illinois. May I interrupt at that point? Is the gentleman not then saying we are giving the President, contrary to the requirements of section 8, article I of the Constitution, for at least 90 days, this authority, and we are telling the President, "You do have the power to declare war when you decide an emergency or necessity, undefined, exists."

Mr. DENNIS. I do not believe we are giving him a thing he does not have today. I am recognizing the emergency situation, as Madison recognized the right to repel sudden attacks, as he said. I am stating the present situation. Then I am introducing something that is new, which is giving to the President the duty to report and to us the duty to vote, neither of which now exists. So I feel I am curtailing the President's powers.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(By unanimous consent, Mr. ANDERSON of Illinois was allowed to proceed for 2 additional minutes.)

Mr. ANDERSON of Illinois. Madam Chairman, I yield further to the gentleman from Indiana.

Mr. DENNIS. I pass to section 4. The gentleman says, "War by the installment plan." I cannot really agree with that. I am surprised by the gentleman's objection to this. I thought this would appeal to the gentleman.

Here we are, for instance, in a situation like Vietnam where probably 90 percent of those here supported it. Everybody voted for the Gulf of Tonkin resolution.

Mr. ANDERSON of Illinois. Will the gentleman allow me to intervene and to suggest that we got into the war in Vietnam by gradual stages. It seems to me the provision here is almost an invitation for the Congress to go ahead and vote the authorization now because 6 months from now we will reconsider and if we do not like what is happening we can get out. That is what I want to avoid.

Mr. DENNIS. The point I am making is that conditions change. At one time we may all be for a war, and 5 years later most of us will be against the war.

I believe it is important to have a continuing participation by the Congress and an opportunity to reaffirm and support our position, or to tell the Executive we have changed our minds. That is a very important feature of my proposal, which ought to appeal to the gentleman, and I am surprised it does not.

Mr. ANDERSON of Illinois. It does not for the reason that I believe getting into war is such a serious business from now on. If Vietnam has taught us anything, it should have taught us that unless the fundamental security of this country is involved we are not going to pursue that kind of an adventure.

Mr. DENNIS. That is the purpose of my proposal, really, for us to take a supervisory role, which I believe most of us here would favor.

Finally, on section 5, the gentleman neglects to point out the first thing said, and very positively said, is that the President shall withdraw and disengage just as expeditiously as may be possible. I give him certain guidelines, under those circumstances, to which he should pay some attention while withdrawing.

I would be very much surprised if the gentleman from Illinois did not believe that while withdrawing he should be able to pay attention to the safety of our Armed Forces.

Mr. ANDERSON of Illinois. If the genman will permit, we have already made that decision in the Congress. When we pass a resolution or a bill which says to withdraw, then we have decided the question, that the defense and security of this country are not involved. Why go back and relitigate the same question?

Mr. DENNIS. But we ought to withdraw with due deliberation and not sacrifice perhaps a division while we do it. That is all this means.

The CHAIRMAN. The time of the gentleman from Illinois has again expired.

(On request of Mr. TAYLOR of North Carolina, and by unanimous consent, Mr. ANDERSON of Illinois was allowed to proceed for 1 additional minute.)

Mr. TAYLOR of North Carolina. Madam Chairman, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from North Carolina.

Mr. TAYLOR of North Carolina. I should like to commend the gentleman on his statement and state that I, too, favor a requirement of positive action by the Congress.

I should like to call the attention of the Members of the House to the results of a questionnaire which I mailed to constituents less than a month ago. One question was:

> Do you favor legislation which I am cosponsoring providing that in the future our Nation not be taken into any war except a purely defensive action for a limited period of time unless the war has been declared by Congress?

The result was that 92 percent said, "Yes;" only 8 percent said, "No."

Madam Chairman, I would say that these American citizens, 92 percent of the ones responding, are asking that our Nation not be taken into any war unless that war has a significant degree of public support so that Congress in its judgment would vote for a declaration of war.

Mr. KETCHUM. Madam Chairman, I move to strike the necessary number of words.

Madam Chairman, I have listened patiently to our very distinguished attorney colleagues here today, and for the past 7 months, and I must say that I am constrained to say that time and time again I have been forced to wonder as a dirt farmer whether they have the capacity to organize a two-car funeral in less than 6 months.

We have been debating this bill for almost 4 hours. I would just like to comment upon my experiences in Congress as a freshman Member. Every day since I have been here, both on the floor and in committee and in subcommittee, I have heard reference made to the fact that depending upon your philosophy, the Congress has either abdicated its responsibilities to the President of the United States or that the President of the United States has usurped the powers of Congress.

Now, I quite agree with most of the Members on this floor in the feeling that we do need or do desire a war powers bill, but we need a war powers bill that makes sense. It seems to me at least—perhaps it is my opinion only—that the committee bill, despite the fact that it has had much work and much debate, represents a negative approach to the people of the United States, by saying that we will still have the best of both worlds and, therefore, we can sit on our hands for 120 days and then the President has to discontinue any operations.

Madam Chairman, I do not think that the American people are a negative people. I think the American people are an affirmative people and that they expect affirmative action from their Congressmen. Therefore, I definitely support the Dennis amendment and the Regula amendment thereto as evidence of affirmative action on the part of a viable, live body instead of a body which is forever sitting on its hands.

Mr. MIZELL. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in support of the substitute offered by the gentleman from Indiana (Mr. DENNIS).

Throughout this session of Congress, there has been a great hue and cry about the need for Congress to reassert its authority, especially on the great issues of war and peace.

Yet the legislation before us today would, in effect, require of Congress not an authoritative voice but an apathetic silence. Its emphasis is upon the Congress failing to act, rather than acting decisively.

Mr. DENNIS' substitute does what House Joint Resolution 542 should do—it requires of the Congress either an act of approval of a presidential action to deploy combat troops, or an act of disapproval.

With the series of interim reports called for in the Dennis amendment, the Congress would clearly and actively be involved in any such operation from start to finish, and it could at any time express by appropriate legislation its belief that such a military operation should be halted.

Madam Chairman, I believe the Dennis substitute offers us the best opportunity to prevent our becoming involved in another Vietnam.

I, for one, never want to see the United States of America involved in a war which takes the lives of more than 50,000 brave young men without allowing them to pursue victory.

If the war is important enough to commit American troops, it should be impor-

tant enough to win and to be supported by the Congress and by the American people.

This is the policy I want to see adopted, and I am convinced the Dennis amendment would best suit the implementation of that policy. I urge my colleagues to join me in voting for its passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. REGULA) to the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The question was taken; and on a division (demanded by Mr. DENNIS) there were—ayes 45, noes 48.

So the amendment to the amendment in the nature of a substitute was rejected.

AMENDMENT OFFERED BY MR. ECKHARDT TO THE AMENDMENT IN THE NATURE OF A SUBTITUTE OFFERED BY MR. DENNIS

Mr. ECKHARDT. Madam Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT to the amendment in the nature of a substitute offered by Mr. DENNIS: Page 1, in section 1, strike out the last words of the section which read: "the existence of which emergency or necessity is to be determined by the President of the United States" and substitute therefor the following: "of a nature which makes impossible a congressional determination of the requisite timeliness."

Mr. ECKHARDT. Madam Chairman, I intend to test the gentleman from Indiana's determination not to enlarge Presidential power by section 1. If he does not wish to enlarge Presidential power one iota. he will not then delegate to the President the determination as to whether or not that power needs to be enlarged but will join me in providing that the only exceptional situation is a situation of a nature which makes impossible a congressional determination of the requisite timeliness.

If there is a possibility of congressional determination of whether or not we go to war of the requisite timeliness, then Congress should have the opportunity to make it and nobody else. The President should not be permitted to make that decision. That is a decision that should be ultimately made by Congress itself.

I hope that the gentleman will join me in that amendment, because I do not believe it hurts his bill in its competition with the committee bill.

Mr. DENNIS. Will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman.

Mr. DENNIS. Would the gentleman be good enough to repeat his language again? I do not have a copy of it.

Mr. ECKHARDT. The language reads this way, and let me read the section so that we have it in context:

In the absence of a declaration of war by the Congress or of a military attack upon the United States, its territories or possessions, the Armed Forces of the United States shall not be committed to combat or introduced into a situation where combat is imminent or likely at any place outside of the United States, its territories and possessions, without prior notice to and specific prior authorization by the Congress, except in case of emergency or necessity of a nature which makes impossible a congressional determination of the requisite timeliness.

Mr. DENNIS. I would say to my good friend from Texas, with whom I always enjoy discussing these matters that are constitutional problems, that my greatest problem with his amendment is that I really do not see exactly how we are to determine, or who is to make the determination, of whether or not the emergency is of a nature which makes impossible the congressional determination of timeliness. It is all right in principle, maybe, but how do you do it?

Mr. ECKHARDT. Will the gentleman yield back to me at that point?

Mr. DENNIS. Of course.

Mr. ECKHARDT. Let me say to the gentleman that I am doing precisely the same thing he was doing with respect to his reluctance to choose between a concurrent and a joint resolution. I am simply saying the decision should be made as a matter of principle by Congress if there is the requisite timeliness.

Mr. DENNIS. Yes.

Mr. ECKHARDT. And I think that that issue will have to be determined, but I do not want to leave it altogether up to the President, because it might be determined by the Supreme Court or by the Congress.

Mr. DENNIS. If the gentleman will yield further, I would like to remind my friend that by definition we are dealing with an emergency and we are not going to have time for a congressional debate or a court decision about it.

What the gentleman from Texas is suggesting is an impossible standard in practice.

Mr. ECKHARDT. Let me see if I am. I am merely stating that if it is not impossible for Congress to make the determination with requisite timeliness, Congress should make it. That is all I am saying, and I assume the President is going to act on that basis. But I am certainly not willing to write into this bill an open-ended invitation to the President to simply determine that it is an emergency with no standards attached. I am establishing standards of requisite timeliness.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, the gentleman from Texas (Mr. ECKHARDT) has performed a very valuable service by offering his amendment, in pointing out very clearly what the gentleman from Indiana (Mr. DENNIS) has so modestly tried to say, which is that he is not doing anything new to the war powers of the President. It is quite clear, in opposition to the amendment offered by the gentleman from Texas (Mr. ECKHARDT) that the gentleman from Indiana has done quite to the contrary when for the first time in history it institutionalizes the right of the President to initiate action, and then goes further and wants to make the decision rest upon the passage of his amendment.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(On request of Mr. FASCELL, and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. FASCELL. Madam Chairman, if the gentleman from Texas will yield further, does not the gentleman from Texas agree that, following the logic and theory of the gentleman from Indiana (Mr. DENNIS), if the Congress today votes for the amendment offered by the gentleman from Indiana, we would in effect be determining now and for all time every emergency and necessity as the President may see fit?

Mr. ECKHARDT. Precisely. If the gentleman from Indiana really did not want to enlarge the authority of the President he would permit us to write into the bill the standard that if Congress can act with requisite timeliness Congress should have the ultimate and sole authority. That is what the Constitution says. That is all I want to put into this bill.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Indiana.

Mr. DENNIS. Madam Chairman, I would like to point out two things to my friend, the gentleman from Texas. The first is that under my bill we are actually not dealing with the kind of situation where you can make the kind of determination his language would call for; rather we are dealing with an emergency.

Mr. ECKHARDT. There is nothing in my language that says so. All my language does is to set a standard, and the President must comply with the standard.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

(On request of Mr. DENNIS and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. DENNIS. Madam Chairman, if the gentleman will yield further, the second point I wanted to make was, and the gentleman may agree with me on this, that under the committee bill the same problem, if any, arises; because it too contemplates that the President may on occasion commit troops without prior congressional authority.

Mr. ECKHARDT. The gentleman is correct, there are many defects in the original bill. I feel that this is such a serious defect in the amendment offered as a substitute that unless the gentleman agrees with me on my amendment, it seems to me that it is overwhelmingly convincing that the amendment in the nature of a substitute clearly enlarges the authority of the President from that which now exists.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT) to the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The question was taken; and on a division (demanded by Mr. ECKHARDT) there were—ayes 49, noes 41.

Mr. DENNIS. Madam Chairman, I demand tellers.

Tellers were refused.

So the amendment to the amendment in the nature of a substitute was agreed to.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from Florida (Mr. BENNETT) for the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The substitute amendment for the amendment in the nature of a substitute was rejected.

SUBSTITUTE AMENDMENT OFFERED BY MR. YOUNG OF FLORIDA FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DENNIS

Mr. YOUNG of Florida. Madam Chairman, I offer a substitute amendment for the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The Clerk read as follows:

Substitute amendment offered by Mr. YOUNG of Florida for the amendment in the nature of a substitute offered by the gentleman from Indiana, Mr. DENNIS: Strike out all after the resolving clause and insert in lieu thereof the following:

SHORT TITLE

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

CONSTITUTIONAL AUTHORITY OF THE PRESIDENT NOT IMPAIRED

SEC. 2. Nothing in this Act shall be construed to impair the authority of the President to commit United States Armed Forces to hostilities in any case of attack, or threatened attack, on the United States, or any possession or territory of the United States, to the extent that the President has such authority under the Constitution.

TREATY OBLIGATIONS

SEC. 3. (a) If the President commits United States Armed Forces to hostilities pursuant to any treaty obligation of the United States without prior declaration of war or other specific congressional authorization for the use of such forces, the President shall report such action to the Congress in writing, as expeditiously as possible but not later than twenty-four hours after the taking of such action. Such report shall contain a full account of the circumstances under which such action was taken and shall set forth the facts and circumstances relied upon by the President as authorizing and justifying the same. In the event the Congress is not in session when the report is transmitted, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable, shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to the section.

(b) Not later than one hundred and twenty days after the receipt of the report of the President provided for in subsection (a), the Congress, 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 and require the discontinuance of the same.

(c) If the Congress, acting pursuant to and under the provisions of subsection (b), shall approve, ratify, and confirm and shall authorize the continuation of the action taken by the President and so reported to the Congress, the President shall thereafter report periodically in writing to the Congress at intervals of not more than six months as to the progress of any hostilities involved and as to the status of the situation, and the Congress shall, within a period of thirty days from and after the receipt of each such six-month report, again take action by the enactment of an appropriation bill or resolution, to either raitfy, approve, confirm and authorize the continuation of the action of the President, including any hostilities which may be involved, or to disapprove and require the discontinuance of the same.

(d) If the Congress shall at any time, acting under the provisions of subsection (b) or (c), disapprove the action of the President and require the discontinuance of the same, then the President shall discontinue the action so taken by him and so reported to the Congress, and shall terminate any hostilities which may be in process and shall withdraw, disengage, and deploy the United States Armed Forces which may be involved, just as expeditiously as may be possible having regard to, and consistent with, the safety of such forces, the necessary defense and protection of the United States, its territories and possesions and the safety of citizens and nationals of the United States who may be involved.

(e) In the event that the Congress, despite the provisions of subsections (b), (c), and (d) of this section, shall, nevertheless, in any instance, fail to adopt legislation either approving or disapproving the action of the President, as provided and required by such subsection, such failure to act on the part of the Congress shall be taken and deemed to be an approval, ratification, and confirmation of the action of the President, and an authorization of the continuation thereof. Disapproval of the President's action, with the consequences attendant thereupon as provided in subsection (d), shall result only from action by the Congress affirmatively disapproving and requiring the discontinuance thereof, as provided in such subsection. Any such failure to act on the part of the Congress shall not relieve the President of the duty to make periodic reports as provided in subsection (c).

OTHER HOSTILITIES

SEC. 4. The President may not commit United States Armed Forces to hostilities in any case in which he is not exercising his constitutional authority or acting pursuant to a treaty obligation of the United States unless the Congress enacts a declaration of war or other specific authorization for the use of such forces.

CERTAIN TREATY OBLIGATIONS

SEC. 5. Nothing contained in this Act shall alter or abrogate any treaty to which the United States is presently party.

SEVERABILITY

SEC. 6. If any provision of this Act or the application thereof to any particular circumstance or situation is held invalid, the remainder of this Act, or the application of such provision to any other circumstance or situation, shall not be affected thereby.

EFFECTIVE DATE AND APPLICABILITY

SEC. 7. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States might be involved on the effective date of this Act.

Mr. YOUNG of Florida (during the reading). Madam Chairman, I ask unanimous consent that the substitute amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. YOUNG of Florida. Madam Chairman, earlier in the debate I took 5 minutes to mention what I intended for this amendment to do. I should like to take this time now to discuss the amendment itself and briefly reiterate my concern that the measures that we have before us in the form of a committee bill and many of the other amendments that will be offered as amendments or as substitutes, in my opinion, are in fact not limitations of warmaking powers, but are in fact extensions of warmaking powers. I cite the example of a brush fire that can so easily get out of control and turn into a forest fire, like what happened in Vietnam.

I should like to have the Members consider very seriously this amendment because it goes to the heart of that.

Section 1 of the amendment says:

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

Section 2 of the bill that I propose says:

Nothing in this Act shall be construed to impair the authority of the President to commit United States Armed Forces to hostilities in any case of attack, or threatened attack, on the United States, or any possession or territory of the United States, to the extent that the President has such authority under the Constitution.

I cite the Prize case in 1863 and I cite the case of Mitchell against Laird in 1973 as a very recent case, where the Federal courts have held that the President does in fact have certain constitutional authorities and in fact certain constitutional obligations to protect the United States. So I guarantee that in this proposal.

Section 3—we all know that the United States has certain treaty commitments. We know that we are involved with NATO and we know that we are involved with SEATO. Section 3 goes to the question of any military action the President might embark upon if he determines it to be in conjunction with a treaty of some type. I do not specify any treaty. I do not cite any specific treaty, but merely say that if the President does deploy U.S. troops in the case of a treaty, then he must report to the Congress immediately, and no later than 24 hours, the action that he has taken, and the Congress, they will have 120 days to make a determination that they either ratify the President's action or they reject the President's action.

In the case of no action on the part of the Congress then the President's action will be considered to be ratified. This is one of the basic arguments we have had all day today. I am concerned about a situation where a bomb might be dropped on this Capitol and there would not even be a Congress to take action and of course the President cannot be handcuffed in that respect.

Secondly, Congress has an obligation to meet its responsibility and should not just sit idly by and do nothing and have its doing nothing in fact become legislative action. So I take the position that Congress must act in order to negate the action on the part of the President.

The main part of the amendment I propose and the main concern I have is dealing with other types of hostilities where a President might, without concurrence of Congress, deploy U.S. troops and might involve us in combat that might turn into a full-scale war. And this

is what I want to prevent and I believe Members want to prevent and I believe the people of America want to prevent. We do not want any more Vietnams where we actually slide into a full-scale war without fully realizing what has been done or in hindsight being able clearly to determine who did it.

In section 4 my amendment talks about other hostilities, saying the President may not commit U.S. Armed Forces to hostilities in any case in which he is not exercising his constitutional authority, which I mentioned previously, or acting pursuant to a treaty obligation of the United States, which I also mentioned previously, unless a Congress enacts a declaration of war or other specific authorization for use of such forces.

If Congress is talking about a limitation of warmaking power we have to include this type of language specifically stating that a President cannot embark in these other areas without specific approval of the Congress.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from Florida (Mr. YOUNG) for the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

The substitute amendment for the amendment in the nature of a substitute was rejected.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS).

RECORDED VOTE

Mr. DENNIS. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by clerks; and there were—ayes 166, noes 250, not voting 17, as follows:

[Roll No. 349]

AYES—166

Abdnor	Daniel, Robert W., Jr.	Hutchinson
Andrews, N. Dak.	Davis, S.C.	Jarman
Archer	Davis, Wis.	Johnson, Pa.
Arends	Dennis	Keating
Ashbrook	Devine	Ketchum
Bafalis	Dickinson	Kuykendall
Baker	Dorn	Landrum
Beard	Duncan	Latta
Bell	Edwards, Ala.	Lent
Blackburn	Erlenborn	Lott
Bray	Eshleman	Lujan
Brinkley	Flynt	McClory
Broomfield	Ford, Gerald R.	McCollister
Brotzman	Forsythe	McEwen
Brown, Mich.	Frelinghuysen	Madigan
Brown, Ohio	Frey	Mailliard
Broyhill, N.C.	Froehlich	Maraziti
Broyhill, Va.	Gettys	Martin, Nebr.
Buchanan	Ginn	Martin, N.C.
Burgener	Goldwater	Mathias, Calif.
Burke, Fla.	Goodling	Mathis, Ga.
Burleson, Tex.	Gross	Mayne
Butler	Grover	Michel
Byron	Gubser	Miller
Camp	Guyer	Mitchell, N.Y.
Cederberg	Haley	Mizell
Chamberlain	Hammer-schmidt	Moorhead, Calif.
Clancy	Hanrahan	Myers
Clausen, Don H.	Hansen, Idaho	Nelsen
Clawson, Del	Harvey	O'Brien
Cleveland	Hébert	Parris
Cochran	Hillis	Pettis
Collier	Hinshaw	Powell, Ohio
Collins, Tex.	Hogan	Price, Tex.
Conable	Holt	Quillen
Conlan	Hosmer	Regula
Crane	Huber	Rhodes
Cronin	Hudnut	Robinson, Va.
Daniel, Dan	Hunt	Roncallo, N.Y.
Runnels	Steiger, Ariz.	Ware
Ruth	Steiger, Wis.	Whitehurst
Sandman	Stephens	Whitten
Sarasin	Stratton	Widnall
Satterfield	Stuckey	Wiggins
Scherle	Symms	Williams
Schneebeli	Taylor, Mo.	Wilson, Bob
Sebelius	Teague, Calif.	Winn
Shoup	Teague, Tex.	Wydler
Shriver	Thomson, Wis.	Wylie
Sikes	Thone	Wyman
Skubitz	Towell, Nev.	Young, Alaska
Snyder	Treen	Young, Fla.
Spence	Veysey	Young, Tex.
Stanton, J. William	Waggonner	Zion
Steelman	Walsh	
	Wampler	

NOES—250

Abzug	Gaydos	Nix
Adams	Giaimo	Obey
Addabbo	Gibbons	O'Hara
Alexander	Gilman	O'Neill
Anderson, Calif.	Gonzalez	Owens
Anderson, Ill.	Grasso	Passman
Andrews, N.C.	Gray	Patten
Annunzio	Green, Oreg.	Pepper
Armstrong	Green, Pa.	Perkins
Ashley	Griffiths	Peyser
Aspin	Gude	Pickle
Badillo	Gunter	Pike
Barrett	Hamilton	Poage
Bennett	Hanley	Podell
Bergland	Hanna	Preyer
Bevill	Hansen, Wash.	Price, Ill.
Biaggi	Harrington	Quie
Biester	Harsha	Railsback
Bingham	Hastings	Randall
Blatnik	Hawkins	Rangel
Boggs	Hays	Rarick
Boland	Hechler, W. Va.	Rees
Bolling	Heckler, Mass.	Reid
Bowen	Heinz	Reuss
Brademas	Helstoski	Riegle
Brasco	Henderson	Rinaldo
Breaux	Hicks	Roberts
Breckinridge	Holifield	Robison, N.Y.
Brooks	Holtzman	Rodino
Brown, Calif.	Horton	Roe
Burke, Calif.	Howard	Rogers
Burke, Mass.	Hungate	Roncalio, Wyo.
Burlison, Mo.	Ichord	Rooney, N.Y.
Burton	Johnson, Calif.	Rooney, Pa.
Carey, N.Y.	Johnson, Colo.	Rose
Carney, Ohio	Jones, Ala.	Rosenthal
Carter	Jones, N.C.	Rostenkowski
Casey, Tex.	Jones, Okla.	Roush
Chappell	Jones, Tenn.	Roy
Chisholm	Jordan	Roybal
Clark	Karth	Ruppe
Clay	Kastenmeier	Ryan
Cohen	Kazen	St Germain
Collins, Ill.	Kluczynski	Sarbanes
Conte	Koch	Schroeder
Conyers	Kyros	Seiberling
Corman	Leggett	Shipley
Cotter	Lehman	Shuster
Coughlin	Litton	Sisk
Culver	Long, La.	Slack
Daniels, Dominick V.	Long, Md.	Smith, Iowa
Davis, Ga.	McCloskey	Smith, N.Y.
de la Garza	McCormack	Staggers
Dellenback	McDade	Stanton, James V.
Dellums	McFall	Stark
Denholm	McKay	Steed
Dent	McKinney	Steele
Derwinski	McSpadden	Stokes
Diggs	Macdonald	Stubblefield
Dingell	Madden	Studds
Donohue	Mahon	Sullivan
Drinan	Mallary	Symington
Dulski	Mann	Taylor, N.C.
du Pont	Matsunaga	Thompson, N.J.
Eckhardt	Mazzoli	Thornton
Edwards, Calif.	Meeds	Tiernan
Eilberg	Metcalfe	Udall
Esch	Mezvinsky	Ullman
Evans, Colo.	Milford	Van Deerlin
Fascell	Minish	Vander Jagt
Findley	Mink	Vanik
Fish	Mitchell, Md.	Vigorito
Flood	Moakley	Waldie
Flowers	Mollohan	Whalen
Foley	Montgomery	White
Ford, William D.	Moorhead, Pa.	Wilson, Charles H., Calif.
Fountain	Morgan	Wilson, Charles, Tex.
Fraser	Mosher	Wolff
Frenzel	Moss	Wright
Fulton	Murphy, Ill.	Wyatt
Fuqua	Murphy, N.Y.	Yates
	Natcher	Yatron
	Nedzi	Young, Ga.
	Nichols	Zablocki
		Zwach

NOT VOTING—17

Danielson	King	Pritchard
Delaney	Landgrebe	Saylor
Downing	Melcher	Talcott
Evins, Tenn.	Mills, Ark.	Young, Ill.
Fisher	Minshall, Ohio	Young, S.C.
Kemp	Patman	

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Madam Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. ECKHARDT: Strike out all after the Resolving Clause and insert in lieu thereof the following:

SHORT TITLE

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

SECTION 2. The President shall not commit United States Armed Forces to situations in which hostilities are inherent or imminent, or substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation, unless

(1) there has been a declaration of war by Congress, or

(2) there has been action by Congress specifically authorizing such commitment or enlargement of forces, or

SEC. 3. (a) Within 72 hours after the action dent is within such constitutional authority as he may possess without any authorizing or declaratory action by Congress, he shall, contemporaneously with such act, inform the Speaker of the House of Representatives and the President Pro Tempore of the Senate the circumstances necessitating his action and the constitutional and legislative provisions under the authority of which he took such action.

SEC. 3. Within 72 hours after the action referred to in section 2, the President shall submit to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate a report in writing setting forth—

(1) the circumstances necessitating his action;

(2) the constitutional and legislative provisions under the authority of which he took such action; and

(3) such other information as the President may deem useful to the Congress respecting such action.

(b) The President shall promptly respond, in person, through the personal appearance and testimony of the Secretary of State, or in writing, to the request of either House or the Committees of either House respecting

(1) the estimated scope of activities embraced within such commitment or such enlargement of forces;

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

(3) such other information as the appropriate agencies of Congress may deem useful in the fulfillment of their respective constitutional responsibilities.

Nothing in this subsection shall lessen the authority of Congress, or of either House, or of the Committees of either House to call such witnesses and conduct such hearings and inquiries as they might do were this subsection not in effect.

SEC. 4. (a) In any situation subject to the provisions of section 2(3) of this Act, it is specifically affirmed that Congress may direct by joint resolution that forces committed or enlarged in the manner therein

provided shall be disengaged in such manner as Congress shall direct.

(b) In the event that presidential action trenches upon the plenary power of Congress to declare or not to declare war, or to permit or not permit continued engagement in hostilities, Congress may declare by concurrent resolution that no such delegation or permission has been made or extended and the President shall forthwith discontinue such action and effect complete disengagement in such hostilities.

SEC. 5. Nothing in this Act—

(1) shall be construed to alter the constitutional authority of the Congress or of the treaties;

(2) shall be construed to represent congressional acceptance 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; or

(3) shall be construed as granting any authority to the President with respect to the commitment of United States Armed Forces to hostilities or to the territory, airspace, or waters of a foreign nation which he would not have had in the absence of this Act.

(4) shall be construed as recognizing the existence of any inherent power of the presidency to take any act referred to in Sec. 2(3) which is immune from a contrary direction by Congress.

SEC. 6. (a) Congress declares that care that this law be faithfully executed and that no executive action circumvent Congress' powers under the eleventh clause of Article I, Section 8 of the Constitution is deemed a matter of highest public trust.

(b) It is the sense of Congress that the President does not inherently possess, in the absence of prior congressional declaration of war or other specific authorization, any power whatever to commit forces or to conduct hostilities, other than the power to take such action as may be required by strict necessity, under circumstances making impossible a congressional determination of the requisite timeliness.

Mr. ECKHARDT (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ECKHARDT. Madam Chairman, this is an amendment that has been in the RECORD of yesterday, printed today, and is substantially the same amendment as was printed some time ago. It was available to the Members when this bill came up for the first time. I believe the amendment as presently drafted accomplishes the purposes of the committee resolution but avoids several very important objections to the committee resolution. Let me explain briefly what it does.

The crux of the amendment is in section 2, where it is provided that the President shall not commit the troops of the United States to situations in which hostilities are inherent or imminent unless: One, there has been a declaration of war by the Congress; or two, there has been action by Congress specifically authorizing such commitment and enlargement of forces—that is the Tonkin Gulf situation, or three, and this is limited to the case where the President has already the power to act as, for instance, he might put carriers in Tonkin Gulf—he has reported to Congress what he is doing.

Section 3 contains substantially the same type of reporting as the committee bill except that section 2, as the Members will notice, requires that the President immediately report the reasons for his action. He must report that immediately. He cannot wait 72 hours to give the reasons for it. But within 72 hours the President shall submit to the Speaker of the House and the President pro tempore of the Senate a report in writing setting forth: First, the circumstances necessitating his action; second, the constitutional and legislative provisions under the authority on which his action was taken; and, third, such other information as the President may deem useful for the Congress respecting such action.

That same language is in the committee bill. I think it is good, but I do not require the President to give economic justification within 72 hours, as the committee bill does. I do not think that is feasible.

Then, under the provisions of section 3(b), the President is required to report promptly in person, through the personal appearance and testimony of the Secretary of State, or in writing, upon the request of either House or the Committee of either House respecting: First, the estimated scope of activities embraced within such commitment or such enlargement of forces; and, second, the estimated financial cost of such commitment or such enlargement of forces.

This the committee amendment required within 72 hours. I think that should be responsive to congressional investigation and request. I think, practically speaking, this method would be a better way to adduce the desired information than by a hastily prepared report.

Essentially that is the reporting provision.

Then section 4—and I think this is extremely important—section 4 says:

In any situation subject to the provisions of section 2(3) of this act—

Section 2(3) of this act covers those acts that the President can do under his existing constitutional authority—

it is specifically affirmed that Congress may direct by joint resolution that forces committed or enlarged in the manner therein provided shall be disengaged in such manner as Congress shall direct.

The reason that has to be done by a bill subject to veto, is because it is dealing with authority that the President has without asking authority from Congress. When we, Congress, direct the President or any other person to do something which he has a right not to do, or when we tell him not to do something that he would otherwise have a right to do, we can only do it by act, which would, of course, be subject to veto.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 5 additional minutes.)

Mr. ECKHARDT. But (b) deals with those activities that the President has usurped or taken unto himself when in fact Congress has the right to do it, and only Congress can give the authority to do it.

Section 4(b) says:

In the event that presidential action trenches upon the plenary power of Congress to declare or not to declare war, or to permit or not to permit continued engagement in hostilities, Congress may declare by—

Now, mind you, the word is "declare"—

by concurrent resolution that no such delegation or permission has been made or extended and the President shall forthwith discontinue such action and effect complete disengagement in such hostilities.

Why do I say this can be done by concurrent resolution? Because nowhere in section 2 was the President given any authority to trench on congressional authority. So all we are doing in 4(b) is saying by concurrent resolution, "we have not given you any authority, Mr. President." And you can do that by concurrent resolution because all you are doing is declaring that Congress has not given up any of its powers.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York.

Mr. WOLFF. I thank the gentleman for yielding.

The gentleman requires that Congress take action; is that correct?

Mr. ECKHARDT. That is right.

Mr. WOLFF. Where does it state in the Constitution that the President has even the remotest authority, outside of an emergency, to commit troops of the United States?

Mr. ECKHARDT. There is not anything in the Constitution, but just for the same reason that the committee bill says in section 4(c) that Congress may order by concurrent resolution that the President cease engaging in activities which he has no power to engage in in the beginning, I feel that there is the necessity of providing for this situation in which the President has trenched upon the congressional powers.

Then section 5 of the bill provides that nothing shall be construed to alter constitutional authority, just like the committee bill. But section 6 goes considerably further, and I think it ties the question down as tightly as possible so that Congress retains its authority. It extends none of its authority to the President for even 120 days or for 90 days or for any time. Congress declares that care that this law be faithfully executed, and that no executive action circumvent Congress powers under the 11th clause of article I of section 8 of the Constitution is deemed a matter of highest public trust.

I have used constitutional language there about care that the law be faithfully complied with, because I want to make it perfectly clear that a violation of this act is the highest type of crime or misdemeanor. I want to make that absolutely clear, and that really is the ultimate means of enforcement of the act.

Section 6(b) says it is the sense of Congress that the President does not inherently possess, in the absence of prior congressional declaration of war or other

specific authorization, any power whatever to commit forces or to conduct hostilities, other than the power to take such action as may be required by strict necessity under circumstances making impossible a congressional determination of the requisite timeliness. Incidentally, that last section is what was put by my amendment into the Dennis amendment, which was just defeated.

Let me say here that I know the authors of this bill, those who have brought it out from the committee, are most sincerely interested in curtailing Presidential power, and I know they are acting in absolutely good faith, but I want to suggest that when they argue that some authority has been granted which may be pulled back by concurrent resolution, they have to imply that the President is given some additional authority that he does not have unless Congress acts, and this is replete in the legislative history of the bill. I have put that in my explanation which I put in yesterday's RECORD.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. The legislative history is replete on this point. In the first place, I pointed out that the internal language of the bill implies that that additional power is extended. In the committee hearings there was considerable discussion, for instance, between Senator JAVITS and Mr. FINDLEY, in which Senator JAVITS said:

> I think that is a question of degree. If we have no authority in the field, the likelihood is of his acting even more adventurously. At least here we can shorten the time under this bill. . . .

In other words, shorten the time in which he is exceeding his authority to the number of days prescribed in the bill in question.

Then in floor debate when I asked the distinguished Chairman of the subcommittee whether or not the section of the committee bill, section 3, would apply to a situation like the landing of troops in Vera Cruz which would, of course, be an act of war, he agreed that it would be within that section.

Then I think the real clincher was the statement of the gentleman from Delaware (Mr. DU PONT) on this floor in answer to the gentleman from Indiana (Mr. DENNIS).

> Mr. DENNIS. Madam Chairman, may I ask does the gentleman believe that if the Congress passes the concurrent resolution under section 4(c) calling for the ceasing of hostilities, that the resolution has the force and effect of law?
>
> Mr. DU PONT. Yes, I do because we have the warmaking power to start with and we are carving out of that an exception and we are giving the President the right to conduct warmaking operations until such time as the two Houses by a simple majority agree we should not do it.

If that does not extend the warmaking power for 120 days, I do not know how to do it. I do not want to give the President the power to extend it for 120 days, or for one day, or for any time.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment in the nature of a substitute offered by the gentleman from Texas, Mr. ECKHARDT. I rise reluctantly to oppose my distinguished colleague. I know that he is learned and creative, and has a sincere interest in this subject matter, since this amendment represents his second effort to overcome the objections, as he sees them, to the pending committee proposal.

However, I have grave reservations about the pending amendment because, in my opinion, it could be interpreted in a way which has not yet been alluded to. Specifically, I believe it would permit the President unlimited and unrestrained power, force a constitutional crisis, and mandate an impeachment as the means of enforcement.

In section 2, the Eckhardt substitute provides:

> . . . the President should not commit United States Armed Forces to situations in which hostilities are inherent or imminent, or substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation, unless
>
> (1) there has been a declaration of war by Congress, or
>
> (2) there has been action by Congress specifically authorizing such commitment or enlargement of forces, or
>
> (3) in the event that the act of the President is within such constitutional authority as he may possess without any authorizing or declaratory action by Congress, he shall . . .

Then the amendment goes on to provide that in such cases the President must inform the Speaker; submit a report in a prescribed period of time, and provides for the guidelines of such report.

In section 4(a) the amendment provides that in any action taken under the previous section 2(3), that is, where the President acts "within such constitutional authority as he may possess without any authorizing or declaratory action by Congress," it is provided that the Congress, by joint resolution, may direct the President that the forces shall be disengaged.

Since the general rule of law is that whenever the President acts, it is presumed that he acts constitutionally, and since it may be reasonably inferred notwithstanding, that the President could and would cite his right to act pursuant to the quoted section 2(3) as being constitutional. In other words, the determination, both by presumption and by statement, of the President could be used in every case that the President decided to act, thereby investing him by statutory citation with unlimited authority to engage in hostilities which are inherent or imminent, or would substantially enlarge the United States Armed Forces equipped for combat already located in a foreign nation.

These are the very acts in section 2 which the gentleman from Texas suggests he wishes to subject to the control of Congress. Yet, under section 4(a), once the President has acted under the statutory citation in section 2(3) of the amendment, either by presumption of law or by his own declaration of constitutionality, the Congress would be required to act by joint resolution.

A majority of the Congress could, by joint resolution, direct the President to disengage. The President could veto the joint resolution. The Congress might be unable to get a ⅔ majority to override the veto. Therefore, a ⅓ majority could thwart the will of the majority, thus leaving us in exactly the same position that we now are in—with one big exception, however—section 2(3) of the amendment would be cited ad infinitum as congressional authority for the President to act as he saw fit.

Obviously, the distinguished gentleman from Texas, a learned lawyer recognizing the potential mischief under these circumstances, ingeniously sought to cope with this difficulty in section 4(b).

That section provides that the Congress could act by concurrent resolution to direct the President to disengage or stop his action as stated under the previous sections. But what are the conditions laid down in section 4(b) for Congress so to act?

Here is the exact language:

> In the event that Presidential action trenches upon the plenary power of Congress to declare or not to declare war, or to permit or not to permit continued engaging in hostilities, it may declare by concurrent resolution that no such delegation or permission has been made or extended, and the President shall forthwith discontinue such action and effect complete disengaging in such hostilities.

Here the distinguished gentleman from Texas gives an equal right to the Congress to determine that the President has acted unconstitutionally whenever, in the opinion of Congress, Presidential action impinges on the plenary power of the Congress.

But the section also provides that the Congress must do something else. The Congress must likewise declare "that no such delegation or permission has been made or extended." In other words, the Congress must find that the President has violated the Constitution. Thus, in order to obtain the right of the Congress to use the concurrent resolution, the amendment mandates an immediate constitutional crisis. For the finding of the Congress in the concurrent resolution, as required under section 4(b), is actually the commencement of impeachment proceedings against the President, in the event he does not acquiesce forthwith to the requirements of the concurrent resolution which presumably is not subject to his veto.

That this sequence of events is called for is made quite clear by the language contained in section 6(a).

In that section, the full authority is set forth for the consideration of the declaration by the Congress pursuant to the authority of section 4(b) as fulfilling the requirements of a vote of the House of Representatives on articles of impeachment. Section 6(a) restates the constitutional charge that the President shall take care that the laws be faithfully executed and declares that the Congress makes such requirement a matter of "highest public trust," thereby setting the predicate for impeachment under article 2, section 4 of the Constitution. The sequence of authority and

events mandates a constitutional crisis; lays the predicate for impeachment; may impede the President in emergency actions; and may actually restrict the Congress because it may be reluctant to adopt such a strong posture.

The difficulties which are presented by the gentleman's substitute are further complicated and compounded by the effort of clarification contained in section 6(b). This makes a present congressional declaration that the President has no authority, in the absence of prior congressional action, nor any power whatever to commit forces or to conduct hostilities, with a broad and vague exception.

That exception reads as follows:

Other than the power to take such action as may be required by strict necessity under circumstances making impossible a congressional determination of the requisite timeliness.

Here in my judgment, while attempting to provide for legitimate or necessary emergencies, the gentleman from Texas has closed the door and then opened it wide.

Accordingly, Mr. Chairman, for these reasons I urge that the amendment in the nature of a substitute now pending and offered by the distinguished gentleman from Texas, be defeated. I sincerely believe it would cause more mischief than it seeks to cure.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. ECKHARDT).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ECKHARDT. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by clerks; and there were—ayes 153, noes 262, not voting 18, as follows:

[Roll No. 350]

AYES—153

Abdnor	Culver	Kastenmeier
Abzug	Daniel, Robert W., Jr.	Koch
Adams	Davis, Wis.	Latta
Anderson, Calif.	Dellums	Leggett
Arends	Dickinson	Lent
Bafalis	Drinan	McClory
Baker	Eckhardt	McEwen
Beard	Erlenborn	Macdonald
Bennett	Eshleman	Madigan
Blackburn	Evans, Colo.	Mailliard
Boggs	Evins, Tenn.	Maraziti
Boiling	Ford, Gerald R.	Martin, N.C.
Bray	Ford, William D.	Mathias, Calif.
Breckinridge	Gonzalez	Mezvinsky
Broomfield	Grasso	Miller
Brotzman	Green, Pa.	Mink
Broyhill, N.C.	Gross	Minshall, Ohio
Broyhill, Va.	Gubser	Mizell
Buchanan	Gude	Moorhead, Calif.
Burgener	Gunter	Nelsen
Burke, Calif.	Guyer	O'Brien
Butler	Hanrahan	O'Hara
Camp	Hawkins	Pettis
Carter	Hechler, W. Va.	Peyser
Cederberg	Heckler, Mass.	Pike
Chamberlain	Hillis	Podell
Chisholm	Hinshaw	Quie
Clancy	Holt	Quillen
Clausen, Don H.	Holtzman	Randall
Cleveland	Hosmer	Rarick
Cohen	Howard	Regula
Collier	Huber	Reuss
Collins, Tex.	Jarman	Rhodes
Conlan	Johnson, Colo.	Roncalio, Wyo.
Conyers	Johnson, Pa.	Roncallo, N.Y.
Coughlin	Jordan	Ruth
Ryan	Steele	Walsh
Sarasin	Steelman	Ware
Sarbanes	Steiger, Wis.	White
Schneebeli	Studds	Winn
Schroeder	Sullivan	Wyatt
Seiberling	Symms	Wydler
Shriver	Taylor, Mo.	Wylie
Shuster	Teague, Calif.	Wyman
Sikes	Teague, Tex.	Yates
Skubitz	Thomson, Wis.	Yatron
Smith, N.Y.	Thone	Young, Fla.
Snyder	Thornton	Young, Ga.
Stanton, J. William	Towell, Nev.	Young, Ill.
Stark	Veysey	Young, Tex.
	Waldie	Zwach

NOES—262

Addabbo	Fuqua	Myers
Alexander	Gaydos	Natcher
Anderson, Ill.	Gettys	Nedzi
Andrews, N.C.	Giaimo	Nichols
Andrews, N. Dak.	Gibbons	Nix
Annunzio	Gilman	Obey
Archer	Ginn	O'Neill
Armstrong	Goldwater	Owens
Ashbrook	Goodling	Parris
Ashley	Green, Oreg.	Passman
Aspin	Griffiths	Patten
Badillo	Grover	Pepper
Barrett	Haley	Perkins
Bell	Hamilton	Pickle
Bergland	Hammer-schmidt	Poage
Bevill	Hanley	Powell, Ohio
Biaggi	Hanna	Preyer
Biester	Hansen, Idaho	Price, Ill.
Bingham	Hansen, Wash.	Price, Tex.
Boland	Harrington	Railsback
Bowen	Harsha	Rangel
Brademas	Harvey	Rees
Brasco	Hastings	Reid
Breaux	Hays	Riegle
Brinkley	Hébert	Rinaldo
Brooks	Heinz	Roberts
Brown, Calif.	Helstoski	Robinson, Va.
Brown, Mich.	Henderson	Robison, N.Y.
Brown, Ohio	Hicks	Rodino
Burke, Fla.	Hogan	Roe
Burke, Mass.	Holifield	Rogers
Burleson, Tex.	Horton	Rooney, N.Y.
Burlison, Mo.	Hudnut	Rooney, Pa.
Burton	Hungate	Rose
Byron	Hunt	Rosenthal
Carey, N.Y.	Hutchinson	Rostenkowski
Carney, Ohio	Ichord	Roush
Casey, Tex.	Johnson, Calif.	Rousselot
Chappell	Jones, Ala.	Roy
Clark	Jones, N.C.	Runnels
Clawson, Del	Jones, Okla.	Ruppe
Clay	Jones, Tenn.	St Germain
Cochran	Karth	Satterfield
Collins, Ill.	Kazen	Sebelius
Conable	Keating	Shipley
Conte	Ketchum	Shoup
Corman	Kluczynski	Sisk
Cotter	Kuykendall	Slack
Crane	Kyros	Smith, Iowa
Cronin	Lehman	Spence
Daniel, Dan	Litton	Staggers
Daniels, Dominick V.	Long, La.	Stanton, James V.
Davis, Ga.	Long, Md.	Steed
Davis, S.C.	Lott	Steiger, Ariz.
de la Garza	Lujan	Stephens
Delaney	McCloskey	Stokes
Dellenback	McCollister	Stratton
Denholm	McCormack	Stubblefield
Dennis	McDade	Stuckey
Dent	McFall	Symington
Derwinski	McKay	Taylor, N.C.
Devine	McSpadden	Thompson, N.J.
Diggs	Madden	Tiernan
Dingell	Mahon	Treen
Donohue	Mallary	Udall
Dorn	Mann	Ullman
Dulski	Martin, Nebr.	Van Deerlin
Duncan	Mathis, Ga.	Vander Jagt
du Pont	Matsunaga	Vanik
Edwards, Ala.	Mayne	Vigorito
Edwards, Calif.	Mazzoli	Waggonner
Eilberg	Meeds	Wampler
Esch	Melcher	Whalen
Fascell	Metcalfe	Whitehurst
Findley	Michel	Whitten
Fish	Milford	Widnall
Flood	Minish	Wiggins
Flowers	Mitchell, Md.	Williams
Flynt	Mitchell, N.Y.	Wilson, Bob
Foley	Moakley	Wilson, Charles H., Calif.
Forsythe	Mollohan	Wilson, Charles, Tex.
Fountain	Montgomery	Wolff
Fraser	Moorhead, Pa.	Wright
Frelinghuysen	Morgan	Young, Alaska
Frenzel	Mosher	Young, S.C.
Frey	Moss	Zablocki
Froehlich	Murphy, Ill.	Zion
	Murphy, N.Y.	

NOT VOTING—18

Blatnik	Kemp	Pritchard
Danielson	King	Roybal
Downing	Landgrebe	Sandman
Fisher	Landrum	Saylor
Fulton	Mills, Ark.	Scherle
Gray	Patman	Talcott

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

PERSONAL ANNOUNCEMENT

Mr. YOUNG of Illinois. Madam Chairman, I move to strike the last word.

Madam Chairman, while conferring with representatives of the EPA on legislation for tomorrow, I missed rollcall vote No. 349 on the amendment in the nature of a substitute offered by the gentleman from Indiana (Mr. DENNIS). I would like the RECORD to show that I was in favor of that amendment.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

CONSULTATION

SEC. 2. The President in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostilities or to situations where hostilities may be imminent, and after every such commitment shall consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities may be imminent.

REPORTING

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

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

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

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

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

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions under the authority of which he took such action;

(C) the estimated scope of activities;

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

(E) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

CONGRESSIONAL ACTION

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

Committee on Foreign Affairs of the House of Representatives and to the Senate Foreign Relations Committee for appropriate action, and each such report shall be printed as a document for each House.

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

(c) Notwithstanding subsection (b), at any time that the United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or other specific authorization of the Congress, such forces shall be disengaged by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURE

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

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

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

SEC. 6. (a) Any resolution introduced pursuant to section 4(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Senate Foreign Relations Committee as the case may be, and shall be reported out by such committee together with its recommendations within fifteen calendar days.

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

(c) Such a resolution passed by one House shall be referred to the appropriate committee of the other House 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 legislative days, unless such House shall otherwise determine by yeas and nays.

INTERPRETATION OF ACT

SEC. 7. Nothing in this resolution (a) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties;

(b) shall be construed to represent congressional acceptance 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; or

(c) shall be construed as granting any authority to the President with respect to the commitment of United States Armed Forces to hostilities or to the territory, airspace, or waters of a foreign nation which he would not have had in the absence hereof.

EFFECTIVE DATE

SEC. 8. This resolution shall take effect on the date of its enactment.

Mr. ZABLOCKI (during the reading). Madam Chairman, I ask unanimous consent that the remainder of the joint resolution be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

COMMITTEE AMENDMENTS

Mr. ZABLOCKI. Madam Chairman, I ask unanimous consent that the committee amendments may be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read as follows:

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

On page 4, line 19, insert "one such resolution or bill" immediately after "and".

On page 5, line 15, insert "one such resolution" immediately after "and".

On page 6, immediately after line 3, 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 16, strike out "7" and insert in lieu thereof "8".

On page 7, line 3, strike out "hereof" and insert in lieu thereof "of this Act".

On page 7, immediately after line 3, 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 7, line 11, strike out "8" and insert in lieu thereof "10".

On page 6, line 16 and page 7, line 11 strike out "resolution" and insert in lieu thereof "Act".

The CHAIRMAN. The question is on the committee amendments.

Mr. FRELINGHUYSEN. Madam Chairman, I rise in opposition to the committee amendment on page 7, line 4, inserting section 9.

The CHAIRMAN. Is there objection to the other committee amendments? If not the Chair will put the question on the remaining committee amendments.

There was no objection.

The remaining committee amendments were agreed to.

The CHAIRMAN. The Chair would now like to ask the gentleman, does he wish to oppose the committee amendments?

Mr. FRELINGHUYSEN. Madam Chairman, I rise in opposition to the committee amendment which starts on line 4, page 7, and runs through line 9.

The CHAIRMAN. All other committee amendments have been agreed to. The gentleman will be recognized in opposition to the committee amendment.

Mr. FRELINGHUYSEN. Madam Chairman, I rise in opposition to the committee amendment, adding section 9. This makes this proposal apply to existing commitments.

I think the action that was taken 3 weeks ago with respect to the hostilities still continuing in Southeast Asia indicates quite clearly that the way to deal with existing commitments is through specific action and not by generalities. I know of no other hostilities that such language might apply to but the ongoing hostilities in Southeast Asia.

Quite obviously, the reference to all commitments of U.S. Armed Forces to hostilities existing on the date of the enactment of this Act refers to nothing, unless it refers to the commitment in Southeast Asia. Quite obviously, we have reached agreement about how we feel on that subject, and what the relationship between the Executive and the legislative branches of our Government should be with respect to that conflict.

There was discussion in committee about the advisability of trying to make this kind of language specifically apply to Southeast Asia. However, it was felt that it might rock the boat; that we should not get involved in existing commitments. The decision was deliberately made to leave this general language in. I would hope that Members would see that it obviously means nothing. In fact, it detracts from the possible meaning of this resolution to future conflicts to give some kind of a green light to the Executive for 120 days for an existing commitment. Presumably he, the President, is under tighter restraints than that with respect to the hostilities which are unhappily still continuing in Southeast Asia.

I would trust that we could drop this language as being inappropriate to a resolution which, if it means anything, should have meaning with respect to future conflicts only.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from Indiana.

Mr. DENNIS. Is it not true that if this language remains in the bill and we should unfortunately by the time this effort here becomes a law, which may be some days down the road, be already engaged in a major war of some sort, we would then be confronted with the situation, even though we were involved in hostilities on a wide scale, of having to backtrack and apply the untried provisions of this bill to a situation which already existed, and which existed prior to the time the bill was amended?

I say to the gentleman this is one of my reservations about the advisability of

trying to put us into a legislative straitjacket with respect to future commitments of the troops and the fact that there may be an actual commitment of troops in some part of the world to which this language would apply gives me no comfort. I would like us to take each situation as it may come and act appropriately on the basis of information to be provided by the Executive about the reason why there has been a commitment of troops, but quite obviously it could apply to a conflict which has not yet broken up and it would make an automatic application to such a conflict.

Mr. McKINNEY. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from Connecticut.

Mr. McKINNEY. Madam Chairman, I concur with the gentleman's remarks completely.

The issue before us today rests at the heart of the constitutional crisis facing the United States today. For years, the Congress of the United States has, in essence, abdicated its power to the executive and judicial branches of government. A long and sad history of this abdication through the years is very obvious and, in such areas as Vietnam and school busing, tragic.

Nowhere, however, is the slide from power more obvious than in our failure to enforce our constitutional responsibility to send American men to war and their possible death. The court decisions listed below are a sad record of our slide from 1871, when the court said, "The war making power is by the Constitution vested in the Congress, and the President has no power to declare war or conclude peace . . .", to 1970 when in Berk against Laird the court said:

Notwithstanding the lack of explicit declaration of war, Congress has authorized hostilities in Vietnam in a manner sufficiently explicit to satisfy constitutional requirement.

PERKINS AGAINST ROGERS—1871

The war making power is by the Constitution vested in Congress and the President has no power to declare war or conclude peace except as he may be empowered by Congress.

GREENVILLE ENTERPRISES AGAINST JENNINGS—1947

A formal declaration by Congress is essential not only to place the country in a state of war but to terminate a state of war theretofore declared to exist.

WESTERN RESERVE LIFE INSURANCE AGAINST MEADOWS—1953

Although Congress has sole power with respect to declaring the state of war, no such provision exists with reference to termination of war.

BERK AGAINST LAIRD—1970

Congressional power to declare war as conferred by Constitution was intended as an explicit restriction upon power of executive to initiate war on his own prerogative.

ATLEE AGAINST LAIRD—1972

Constitutional provision vesting in Congress power to declare war was intended to make it more difficult for nation to engage itself in war by lodging power in body of men rather than permitting one man to make such decision.

ORLANDO AGAINST LAIRD—1971

Congressional action, including the furnishing of manpower and materials of war for protracted military operations in Vietnam was sufficient, without an explicit declaration for making of war by the president, to authorize or ratify military activity in Vietnam, and thus executive officers did not exceed their constitutional authority by ordering servicemen to participate in war.

BERK AGAINST LAIRD—1970

Notwithstanding lack of explicit declaration of war, Congress has authorized hostilities in Vietnam in a manner sufficiently explicit to satisfy Constitutional requirements.

In other words, in both the Korean Police Action, and in the Bay of Tonkin Resolution, we have started a process which when abetted by appropriations and authorization have but the indirect stamp of approval of the legislature on undeclared, and in effect, unconstitutional war.

The time has come for Congress to either stop all talk of equality, responsibility and its role in the constitutional setup of our Government, or to act. Impoundment, budget responsibility, confirmation—all under attack—have already weakened this body to a point of impotence. Nothing in the make-up of this great democracy is more important than the people's representatives again assuming their rightful power, elected obligation, and constitutional responsibility to declare war.

Mr. DERWINSKI. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Madam Chairman, I think the gentleman from New Jersey is offering one of the practical amendments of the day and I urge support for his amendment.

Mr. RANDALL. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from Missouri.

Mr. RANDALL. Madam Chairman, I ask the gentleman, is the possibility that if this section would stay in, this would extend the existing, and I think the gentleman said, our present unhappy war, another 120 days?

Mr. FRELINGHUYSEN. I think the fact that Congress has already acted in one direction and what would seem at some future time would be another direction would not be helpful toward solving whatever that particular conflict is, so I think it is particularly unhelpful with respect to the agreement which has been struck between the President and the Congress in that respect.

Mr. RANDALL. The gentleman is on the committee. Does he believe the retention of this section might cause us to be in Cambodia 120 days beyond August 15?

Mr. FRELINGHUYSEN. I would say I would hope that would not be the case.

Mr. RANDALL. I am sure we all hope that does not happen and for that reason the section in order to avoid any possible ambiguity should be removed from the resolution.

Mr. WOLFF. Madam Chairman, I rise in support of the committee amendment.

Madam Chairman, I take this time to inform this body that this amendment passed the committee 33 to 3.

I rise today to speak briefly about one part of the bill we are considering now—section 9, which would assure that, upon the enactment of this law, all hostilities existing will be subject to the provisions of this historic law. This section closes an important gap that would be present in the War Powers bill, were section 9 not included.

First, let us suppose that between today and the final signing of this bill into law, the President commits American troops into hostilities anywhere in the World. Without section 9, the Congress retains no clearly defined jurisdiction to extricate our Nation from the hostilities then ongoing, other than the hazy arguments that have encouraged the continuance of Presidential war in Southeast Asia for so many years. While I firmly believe that the commitment to military hostilities is the constitutional prerogative of the Congress of the United States in almost all cases, we would, under the situation I have described, be without the adequate legislative powers to deal with the situation.

Second, and perhaps even more likely, if renewed hostilities break out in Vietnam or Indochina, and I emphasize that I am talking about actions either prior or subsequent to the enactment of this legislation, it is not inconceivable to me, and indeed is really quite likely, that the administration would argue in the absence of section 9 that such hostilities are not new hostilities undertaken following the enactment of this law, but rather in the nature of continuing hostilities and therefore not subject to its provisions. I need not elaborate too extensively on the implications of such reasoning. Even though we have substantially discontinued the war in Indochina, we still retain thousands of American civilians and support officials, and it would not be unheard of for an American administration to undertake hostilities under the guise of "protection" of those American nationals. And in that case, it is imperative that this bill, which establishes a comprehensive scheme for clarifying the congressional role in such situations, not be crippled by the self-serving arguments of the administration that undertook the renewed hostilities.

There have been questions raised as the interrelation of the August 15th cutoff date agreed upon by the Congress and the President and this provision of the War Powers Act. Certainly, as a valid congressional act, the August 15th cutoff of funds stands—there is no way that the enactment of the War Powers Act extends that date. Such an interpretation would go directly against the clear intention of the Congress, as well as the clear meaning of the wording of this provision. The August 15 cutoff clearly supersedes any implication of an extension in this bill, because any extension of that date must be made by specific authorization of the Congress upon the President's specific request. And indeed of the President should ask for further authorization to carry on the hostilities in Indochina, prior to the enactment of this law, this bill enacted with section 9, would serve to place an additional legal restraint on such activity and would require further consideration by the Congress. And this is as it should be, because

we are now saying to the American people that Congress is restoring unto itself the powers of warmaking arrogated to it under the supreme law of the land, the Constitution of the United States.

Madam Chairman, it is only with the strongest reluctance that I am emphasizing the possibility of a recurrence of military hostilities in Indochina, but unfortunately, that possibility may not be so terribly remote. For this and the other reasons I have stated, I believe it is extremely important that section 9 remain in this bill, for it is imperative that we leave no gaps, no glaring loopholes in this legislation, and that we look into our constitutional responsibility as we are defining it today, the possibility of any resumption of hostilities in Indochina.

Mr. McKINNEY. Madam Chairman, will the gentleman yield?

Mr. WOLFF. I yield to the gentleman from Connecticut.

Mr. McKINNEY. Madam Chairman, I would suggest to the gentleman that the August 15 cutoff date is applicable and, if he would look at the decision of the Court on September 1, he would see that the war in effect was approved because Congress had acquiesced through funding and through manpower authorizations.

Mr. WOLFF. But it is only a cutoff of funds on August 15.

Mr. McKINNEY. But I think the gentleman would agree if this situation existed and we would become involved in Thailand tragically or in some other part of Southeast Asia.

Mr. WOLFF. We could not become involved in Thailand because we are not involved in war in Thailand.

Mr. McKINNEY. That is a final point.

Mr. ROSENTHAL. Madam Chairman, I move to strike the last word.

Madam Chairman, I was one of the three that voted against this amendment in committee. I feared that, this amendment being included in this legislation, there was the outside possibility, albeit not a strong one, that this could extend for 120 days hostilities in Southeast Asia. It does seem to me that this amendment is in some ways inconsistent with the August 15 deadline and that some people might want to argue that the August 15 deadline, insofar as it applies to air bombardment in Cambodia and Laos, would soon supersede this language.

I still have grave doubts about this language because any one of a series of events could renew hostilities in Southeast Asia, even in a very small and exquisite and narrow area. Some people could make the argument that the President then had an additional 120 days to continue that kind of involvement in that area of the world. I do think it is a precarious section to remain in the bill.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. ROSENTHAL. I yield to my colleague from New York (Mr. WOLFF).

Mr. WOLFF. Madam Chairman, the August 15 date supersedes the element of the 120 days and takes precedence as existing legislation.

Mr. ROSENTHAL. I do not think so. My own view is that it does not supersede.

Mr. WOLFF. If the gentleman will read the bill——

Mr. ROSENTHAL. I know that there is a dispute. I know that the gentleman's point of view is that the August 15 date supersedes it. My own view is that there is a good possibility that one could make a persuasive argument, if one were in that situation, that this extends the President's options for 120 days.

Mr. BINGHAM. Madam Chairman, will the gentleman yield?

Mr. ROSENTHAL. I yield to my colleague from New York (Mr. BINGHAM).

Mr. BINGHAM. Madam Chairman, I would like to associate my remarks with the remarks of the gentleman from New York (Mr. ROSENTHAL).

I believe that this section presents or raises unnecessary questions. I think we would be better off leaving this section out, because we have dealt with the problem of Indochina and are dealing with that in other legislation. I think it is simply confusing to say that this legislation deals with the problems of Indochina, so I hope that this committee amendment will be defeated.

Ms. ABZUG. Madam Chairman, will the gentleman yield?

Mr. ROSENTHAL. I yield to the gentlewoman from New York (Ms. ABZUG).

Ms. ABZUG. Madam Chairman, I have many disagreements with this bill because I do not think we should give the President 120 days authority to conduct a war, a power he does not have constitutionally. But it seems to me that not to apply this bill to existing hostilities is a big mistake. We do have rather tenuous conditions in Indochina; not only in Cambodia, but in Vietnam itself, I believe this bill should be able to reach into all situations where the President has acted without authority and is doing so right now.

Therefore, whereas I am not a proponent of this bill. I would certainly keep this provision in it.

Mr. FRELINGHUYSEN. Madam Chairman, will the gentleman yield?

Mr. ROSENTHAL. I yield to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Madam Chairman, I just want to point out that the action taken by the committee approving section 9 was before the vote in the House and Senate with respect to the Cambodian situation. Also, it was done even though the subcommittee which has the primary responsibility for developing the language of the resolution felt that—I think I am speaking correctly—felt that the situation should apply to future situations and not to current ones.

Mr. WOLFF. Madam Chairman, will the gentleman yield further?

Mr. ROSENTHAL. I yield to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. I thank the gentleman for yielding. In the absence of this provision, what would happen in the event there were some hostilities that came about between the time of this act and the signing of the bill?

Mr. ROSENTHAL. In the war in Southeast Asia, my view of the temper of the Congress is that they would cut it off in a lot less than 120 days.

Mr. WOLFF. They could, under the provisions of this bill, they could cut it off in 1 day. One Member could do that. That is the purpose of this bill. This is an outside limit failing all other measures and in no way substitutes the 120-day provision for the August 15 cutoff. I voted at all times to cut off the war immediately and did not desire to continue the war in Indochina 1 more day. If I thought there was any chance of this I would have asked this amendment be deleted.

The CHAIRMAN. The question is on the committee amendment to section 9.

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. FRELINGHUYSEN. Madam Chairman, I demand a division.

PARLIAMENTARY INQUIRY

Mr. ZABLOCKI. Madam Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ZABLOCKI. The vote on the committee amendment was announced, and I did not observe the gentleman standing. What are we voting on?

The CHAIRMAN. The Chair is trying to protect the gentleman's rights.

On a division (demanded by Mr. FRELINGHUYSEN) there were—ayes 45, noes 70.

So the committee amendment was rejected.

AMENDMENT OFFERED BY MR. ECKHARDT

Mr. ECKHARDT. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: On page 7 after line 3 and after section 8, add the following new section:

"SEC. 9. It is the sense of Congress that the President does not inherently possess, or possess by virtue of this Act, in the absence of prior congressional declaration of war or other specific authorization, any power whatever to commit forces or to conduct hostilities, other than the power to take such action as may be required by strict necessity, under circumstances making impossible a congressional determination of the requisite timeliness."

Redesignate section 9 and section 10 as section 10 and section 11, respectively.

Mr. ECKHARDT. Madam Chairman, this is precisely the same amendment in substance and in spirit that I offered to the Dennis amendment in the nature of a substitute. What it says is what the committee says the resolution does. The Committee says the resolution does not at all enlarge Presidential power.

If the there is a time to take action through congressional action, then the matter is not within the power of the President to act upon.

So all this amendment does is to assure that the act has no intention of enlarging Presidential powers one whit. That is what the committee told us the joint resolution does. I hope the committee will go along with me on this amendment, as it did to put it on the Dennis.

Mr. FRASER. Madam Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Minnesota.

Mr. FRASER. I like the amendment up to the last phrase, when in effect it says it is all right for the President to act if he does not have time to consult with Congress.

Let me ask the gentleman a question. Suppose India were about to invade Pakistan and the action were so limited, and Congress was out of session so that there was no time for Congress, and the President felt there was some valid U.S. interest in the situation. As I read the amendment it would by implication say that the President could go ahead and assign forces. The gentleman has made timeliness the single criteria that opens up a Pandora's box. That is precisely the kind of provision I fear.

Mr. ECKHARDT. Madam Chairman, I should like to ask unanimous consent to withdraw my amendment and to substitute for it an amendment reading the same but striking the words "of the requisite timeliness."

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FRASER. Madam Chairman, may the amendment, as modified, now be read?

The CHAIRMAN. The Clerk will report the amendment, as modified.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT: On page 7 after line 3 and after section 8, add the following new section:

"SEC. 9. It is the sense of Congress that the President does not inherently possess, or possess by virtue of this Act, in the absence of prior congressional declaration of war or other specific authorization, any power whatever to commit forces or to conduct hostilities, other than the power to take such action as may be required by strict necessity, under circumstances making impossible a congressional determination."

Redesignate section 9 and section 10 as section 10 and section 11, respectively.

Mr. ECKHARDT. Madam Chairman, does the gentleman now find fault with my amendment?

Mr. FRASER. Madam Chairman, what the gentleman is saying is that the President decides what the "strict necessity" is?

Mr. ECKHARDT. Madam Chairman, I do not say that in any place in the amendment. I thought I had satisfied the gentleman's objections. If the gentleman has some other objection, I would be glad to try to accommodate him, but there is absolutely no language in this provision that says that the President makes that determination.

Mr. FRASER. Madam Chairman, let me read the language of this amendment as it appears now, and ask the gentleman what it means.

The language is: "other than the power to take such action as may be required by strict necessity."

What in the world does that mean?

Mr. ECKHARDT. It means that the President cannot take the power of declaring war unless Congress under the strict necessity of the occasion cannot do it under the circumstances.

Mr. FRASER. Well, no matter where in the world it is and no matter what the level of interest of the United States might be?

Mr. ECKHARDT. Why surely. Congress ought to make the determination if it can possibly do so.

Mr. FRASER. Madam Chairman, I would agree if the gentleman would stop with that. I was for the gentleman's amendment, but now he says that he does not have to come to Congress.

Mr. ECKHARDT. Madam Chairman, if the gentleman wants to cut the amendment off at some other place to make it suitable to him, I do not know at what place we can do that.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, I appreciate the gentleman's yielding to me.

I must confess that I find the same strong reservations in regard to the amendment. I know what the gentleman is trying to do. When we take out that clause, when we take out the timeliness clause, the fact is we institutionalize the right of power by the President, and in that way we might find that we have done something we have tried to avoid for 4 years.

Mr. ECKHARDT. Madam Chairman, the bill as it presently reads, as I see it, may give the President some authority beyond that which must be given by strict necessity, because of the necessity of taking action immediately. All I am attempting to do by this amendment is to say that we are not giving him any other authority than that which he possesses at the present time.

Mr. ZABLOCKI. Madam Chairman, I rise in opposition to the amendment.

The committee bill in section 8 does very clearly and in strong language in the legislation spell out the provisions which the gentleman from Texas apparently intends to clarify, but if I am reading his "sense of Congress" provision correctly, it only raises questions and muddies the water. Therefore, I suggest that the amendment be defeated.

Mr. BINGHAM. Madam Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from New York.

Mr. BINGHAM. Madam Chairman, I thank the gentleman for yielding.

I reluctantly must oppose this amendment also. I think this illustrates the difficulty of writing into a law any definition of the powers of the President in this situation. The language in the Senate bill, the Javits bill, tried to spell out the situations under which the President can act. It has four categories. One can argue that they are too broad; one can argue that they are too narrow.

In the subcommittee we wrestled with this, and in the full committee we wrestled with it. The representatives of the executive branch agree that it is impossible to define the limits of the President's authority and the limits of the congressional authority.

As we have clearly stated in the committee bill, the bill does not add to the President's existing authority. We will be muddying the waters if we try to spell out what we mean by that.

Mr. FRELINGHUYSEN. Will the gentleman yield?

Mr. ZABLOCKI. I am glad to yield to the gentleman.

Mr. FRELINGHUYSEN. I would like to say that I, too, rise in opposition to the amendment and hope it is defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT), as modified.

The amendment was rejected.

AMENDMENT OFFERED BY MR. WHALEN

Mr. WHALEN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WHALEN: Page 3, strike out line 24 and all that follows down through line 5 on page 4 and insert in lieu thereof the following:

(b) Within one hundred and twenty calendar days after a report is submitted or is required to be submitted (whichever is earlier) pursuant to section 3, the Congress, by a declaration of war or by the passage of a 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 such action in which case the President shall terminate any commitment and remove any enlargement of United States Armed Forces with respect to which such report was submitted.

Mr. WHALEN. Madam Chairman, in discussing this amendment I will touch on three points. First, I will explain what the amendment proposes to do; second, I will cite arguments in behalf of the amendment; and, third, I shall address myself to the principal argument that has been logged against this amendment by its opponents.

First, what does this amendment do? It is very simple. It amends section 4(b) of the bill by providing that once the report of the President is received by the Congress, within 120 days the Congress shall vote yes or no on this report. This vote may be taken in the form of a declaration of war or it may be taken either in an affirmative or a negative resolution. I further point out that this resolution may be either a concurrent resolution or a joint resolution.

Second, what are the arguments in favor of this amendment? Let me cite the two most important in my opinion.

It has been pointed out during the debate that one of the great issues which confronts Congress periodically is the commitment of American troops into combat. Time after time American troops have been committed to combat without a formal declaration of war. This resolution is designed to prescribe procedures Congress will follow in the event that we either enlarge our troop placement or in the event we actually commit them to combat without a declaration of war.

I think the bill is a good one. I think it prescribes procedures which heretofore have been lacking. But I believe it it deficient in one respect. While it is designed to give Congress a voice, it also permits Congress through inaction to make an important policy decision. In any question as important as the life and death of American servicemen, the Congress should decide yes or no as to whether or not these troops should be committed to that possible fate. This is what this amendment will do.

The next argument is an institutional

one. We have heard throughout the past years criticism leveled against the U.S. Congress because on occasion Congress has abrogated its responsibilities. I think this bill is designed to reaffirm congressional responsibilities with the exception, as I said, that in the instance of 4(b) a major policy decision can be made with no congressional action. It seems to me, therefore, that this approach perpetuates the faint-hearted image which Congress rightly or wrongly has been tarred with in the past number of years.

My amendment simply makes Congress face its responsibility with a yes or not vote on the question of war and peace.

Let me make the third point. The principal argument that has been lodged against this bill by its opponents was outlined in a memorandum sent to all Members of this body by members of the Committee on Foreign Affairs. In this memorandum it was indicated that one of the fears was that if Congress votes to halt the commitment, the President can veto the resolution and continue the conflict in the event that the Congress cannot muster a two-thirds vote in each Chamber to override that veto.

I would point out, Madam Chairman, that if this occurred, the Congress simply has the opportunity of using the concurrent resolution approach which section 4(b) permits.

Or there is another alternative, and that is to use the provisions of section 4(c). Further, the Congress always has as a last resort the power of the purse through appropriations.

So I think that this argument is specious and is really without foundation.

Madam Chairman, let me say, in conclusion and before responding to questions, that I think it is important that in a matter as urgent as the life and death of American troops, Congress go on record one way or another, either in support of the President, or requiring that the President terminate hostilities.

Mr. ROBISON of New York. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from New York.

Mr. ROBISON of New York. Madam Chairman, I rise in support of the Whalen-Buchanan amendment and in support of final passage of House Joint Resolution 542, so amended. Since my remarks come very near the end of years of scholarly discussion, extended committee hearings and lengthy congressional debate on the subject of the respective war powers of the Congress and the Executive, there is little I need add—or would presume to add—by way of further footnotes to the considerable discussion of constitutional powers and interpretation which has elapsed. My remarks, then, will be of a personal rather than a scholarly nature; and this tone is most appropriate for me since my interest in the war powers discussion, and my support for the legislation before us, derives basically from a strong intuition that something is very wrong with the way our Government has gone about committing U.S. troops during the last 25 years.

Were I to elaborate on this contention in an informal conversation, I imagine I would take a vaguely philosophical tack and look for derelictions in human judgment rather than for short circuits in the governmental system itself. As we have been reminded repeatedly during the course of this debate, the Members of Congress who had the opportunity to determine the future of the Indochinese war through their votes on the Gulf of Tonkin resolution provided an emotional "aye" for the President's determination to expand U.S. military presence in Vietnam.

That hindsight has certainly bothered me during many difficult days of the past few years when the House was faced with other votes which would influence the future of that war; and I would venture that every one of us who voted on the Tonkin Gulf resolution has, at one time or another, looked back to wonder how he would have voted if he had it to do again.

In a manner, we are attempting to do it again today through passage of House Joint Resolution 542. Through procedural changes and, perhaps, more importantly through a significant act of congressional will, we are saying that we want better checks on our own judgment in Congress, and on the collective judgment of the President and his Cabinet. Through House Joint Resolution 542, Congress is attempting to set the criteria for any sort of reasoned judgment on the propriety of engaging U.S. Armed Forces; and we are attempting to assure that, in transmitting his report to the Congress as required in section 3 of the resolution, the President has, at the outset of any military engagement or insertion of troops, sufficiently considered the implications of such a military commitment.

Among those considerations, as required by the legislation before us the President is to provide Congress with an "estimated financial cost of such commitment or such enlargement of forces." Something about this requirement grates on the sensibilities. We would, I imagine, all like to think that when the Congress and the President are willing to commit our young men to battle, we are doing so for reasons so important and so compelling that—and this is always unspoken—cost is no consideration.

Well, we need only look at the requested defense appropriation for fiscal year 1974, if not to the past several years, to say in another voice that cost is most certainly a consideration. Unlike the halcyon days when the total strength of this country's Armed Forces was less than 175,000—and that was as recently as 1915—our total Armed Forces have numbered near 3 million men for the last two decades. To engage a relatively small segment of these forces with their sophisticated weaponry and necessary logistical support still requires millions of dollars a day.

To the degree that even a "ball park" cost figure causes a pause—causes decisionmakers in both the executive and legislative branches to stop for a second to determine what the economic cost of another Vietnam will be to the Nation—then it is eminently reasonable that Congress require the President to report the estimated financial cost. At the same time, one can only hope—and trust—that during this time for reflection, and we are thinking about other "limited" wars like that in Vietnam and not about responding to something like another Pearl Harbor, both President and Congress would consider those other "costs," not measurable in dollars, of going to war.

It is incontestably a comment on the times that Congress must attempt to institutionalize this reporting procedure; and it is no less true that this legislation itself is a mark of the times. America has been for most of its history a minor power in the world, and only since the Second World War has our foreign policy bound this country so tightly to the defense of nations in every corner of the world. The international alliances of the postwar era have certainly been stabilizing forces during a period when emerging superpowers were defining their own spheres of interest and protecting their own governmental systems from expected encroachment. Yet, it is also true that our alliances have provided an intricate set of triggers, which could conceivably demand the presence of U.S. forces in various parts of every continent.

These new responsibilities and the new forms of warfare which have emerged during this century have placed new stresses on the decisionmaking processes of our Government. It is already a truism of this debate that the executive has accumulated more than its constitutional responsibility for committing Armed Forces; yet the technology and high speed communications of our age demand quick assessments and quick judgments; and, in the blur of events, Congress has allowed the executive to become the repository of both the information on which to base such a decision and authority to make a decision to use armed force.

There have been, as well, too many confidences and assumptions during the past decades which allowed congressional acquiescence when a President sent U.S. troops to a Lebanon or a Dominican Republic. Often, information which came after the act questioned the action of the executive; yet a chain of rationalizations or, perhaps, the relatively short duration of the action were sufficient to uphold the reliance of the Congress on the judgment of the executive branch.

The long night of Vietnam has, however, challenged those working assumptions and confidences of Congress so completely that we now must find, as we seek to do today, more careful and more demanding standards of judgment for those in Congress and the executive who must consider the use of our Armed Forces. In a manner, we have found part of the solution by simply debating this legislation. The "war powers bill" is a strong signal of congressional intent to take up its delegated responsibility to control the commitment of U.S. military force; and, I believe, Madam Chairman, that House Joint Resolution 542, with the addition of the Whalen-Buchanan

amendment, is the proper means whereby we can exercise that responsibility.

By seeking the consultation of the President whenever hostilities are imminent, by requiring that the President share with Congress the best information available on the developing situation, and by specifying that Congress actively exercise its own powers of decision—as does the Whalen-Buchanan amendment—this body is attempting to fit the workings of Government to the times.

It must be emphasized, however, that these provisions are intended to right the checks and balances between the two branches of government, and not to reverse the dominance of one branch over the other. What we must do here—and what I believe we are seeking to do—is provide the best means whereby the individuals who make up both the legislative and executive branches can exercise their responsibilities as carefully and as conscientiously as possible.

This kind of reasoning leads me to voice my emphatic support for the Whalen-Buchanan amendment. These gentlemen have provided a most essential check to the decision which Congress must make when called upon to commit American forces. If, at the approach of possible hostilities, Congress has not acted to continue or to halt the President's suggested military response, it is necessary, according to the Whalen-Buchanan amendment, that sometime within the next four months the legislative branch move toward its own decision on the correctness of the President's action. Decision by inaction—as the committee bill would have it—is not the kind of decision we must demand from legislators who are participating in sending their constituents to war. Individual Members of Congress must say "yes" or "no" after studying the best information available, after hearing from their constituents, and after searching their own souls.

Only then can we trust that this country will not venture into war without exercising the best powers of judgment of every individual in the legislative and executive branches.

Madam Chairman, I urge my colleagues to vote favorably on the Whalen-Buchanan amendment and, then, for final passage of the amended bill. At this moment, I have not fully firmed up my vote on the committee bill should the Whalen-Buchanan amendment fail. Key to that decision, I have to assume, would be our judgment relative to the President's attitude toward an unamended committee bill. I listened, early this afternoon, to the minority leader's comments in this regard but found them less than clear. He left the impression with us that the President might favorably consider the basic legislation if the so-called Dennis substitute were adopted. If such were not the case, he hinted that some "modification" of sections 4(b) and 4(c) of the committee bill might avert a Presidential veto, leaving us—for the moment—in the dark as to whether the Whalen-Buchanan language would constitute an acceptable modification. I have, accordingly, given serious consideration to the arguments of the Gentleman from Indiana (Mr. DENNIS) in support of his substitute and—though I wish to congratulate him for the solid contributions he has made to this most interesting debate—some parts of the substitute bother me enough to lead me not to now support it, but to support the Whalen-Buchanan language instead for reasons mentioned.

In the end, I shall probably vote for the committee bill—even if unamended—for, despite the then-uncertain fate of this legislative attempt, I feel the attempt must be made, and the President will have to make his decision, even as we must now make ours.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

(On request of Mr. FISH, and by unanimous consent, Mr. WHALEN was allowed to proceed for 2 additional minutes.)

Mr. BROOMFIELD. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Madam Chairman, I rise in strong support of the amendment offered by the gentleman from Ohio (Mr. WHALEN).

Madam Chairman, I rise in support of the Whalen amendment to section 4(b) to require the affirmative action of Congress to terminate military activities undertaken by the authority of the President.

As it now stands, section 4(b) is susceptible to a most unusual and, I believe, most foolhardy procedure wherein lack of congressional action or agreement is capable of negating actions of the President commisioned under authority of his equally valid constitutional warmaking power.

I have sponsored legislation to reaffirm the warmaking powers of Congress for the past three Congresses. I believe that such legislation is long overdue. Congress has and must exercise its shared responsibility in the field of war powers. Nevertheless, I cannot bring myself to believe that section 4(b), as written, is either prudent or constitutional.

In atempting to remedy the trend toward undue reliance upon the Presidency in the field of war powers, section 4(b) would operate to create a new, but equally serious, error in which undue authority would be placed in the hands of Congress.

Madam Chairman, does anyone seriously believe that the authors of the Constitution ever intended that inaction or silence by the Congress would ever be enough to counterbalance and negate the authority of the executive in this area of shared responsibility? That is what 4(b) would do. It says one equal branch of our Government, the executive, can be overridden by one-half of another equal branch—the Congress. One House could support the President unanimously while a majority of one in the other House could disagree and that minority would prevail. Worse, the entire Congress could sit on its hands, do nothing, and still prevail.

On the other hand, the perfecting amendment would guarantee to the American people that Congress will not sit on its hands. It assures the American people that their elected representatives will exercise their judgment, and I can think of no other time when that judgment will be more urgently needed.

Considering the recent swing toward consolidation of warmaking powers in the Presidency, at the expense of Congress, one would think that we would at the very least all agree that from now on Congress must work its will in the field of war powers. In the past Congress has too often been unwilling or unable to do that. Many times it was because Congress felt it lacked the necessary information to make a sound decision.

This resolution would provide that information in future crises and, this amendment would mandate a decision.

Ironically, section 4(b) would reward and indeed encourage the same silence and inaction that first generated the congressional war powers crisis we seek to remedy.

Madam Chairman, past history and a reasoned view of the future warns us otherwise. I urge that we pass the Whalen amendment to section 4(b).

Mr. FISH. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from New York.

Mr. FISH. Madam Chairman, first I thank the gentleman from Ohio for yielding to me. As I understand it, Madam Chairman, this amendment offered by the gentleman from Ohio requires the Congress to take legislative action to either approve or disapprove Presidential action. Could the gentleman from Ohio tell us what would happen in the event the House or the Senate did not agree to the same measure as the other body, and that disagreement could not be reconciled in conference prior to the expiration of the 120 days?

Mr. WHALEN. May I say to the gentleman from New York (Mr. FISH) that this question was raised before, and I am glad that the gentleman has restated the question, because I did promise during the debate to provide an answer to this question.

By this amendment we are mandating the Congress to act "yes" or "no." If there is a disagreement between the two Chambers, and it cannot be resolved within the 120-day period, then both bodies can enact simple extenders for 15 or 30 days until the conflict is resolved.

Mr. FISH. Madam Chairman, if the gentleman from Ohio will yield further, that would mean that we would pass the 120-day period, and that the President could continue with the hostilities.

Mr. WHALEN. That is correct. As I say, this amendment does mandate action by the Congress, and would require unanimity on the "yes" or "no."

Mr. FISH. Madam Chairman, if the gentleman will yield still further, I would point out to the gentleman from Ohio that we have conferences today that are still in dispute on various problems, and that last year we had several bills that were in conference that never came out of conference.

Mr. WHALEN. If I may cite a more analogous situation, I would refer to the recent continuing resolution that had to

be concluded by June 30 if the Government was to continue to operate in the ensuing fiscal year. I think that is very much analogous to this situation.

Mr. DENNIS. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from Indiana.

Mr. DENNIS. Madam Chairman, I thank the gentleman for yielding, and I would like to associate myself strongly with the amendment that has been offered by my distinguished friend, the gentleman from Ohio (Mr. WHALEN) who is now in the well, and who is a distinguished member of this committee and who has worked long and hard on this matter.

I might add that we have discussed this same thing a while ago, when I was on the floor on the subject of the amendment in the nature of a substitute that I had offered. I thoroughly agree with the gentleman from Ohio, and I urge that the gentleman's amendment be supported.

Mr. GUYER. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to my colleague the gentleman from Ohio (Mr. GUYER).

Mr. GUYER. Madam Chairman, I thank the gentleman from Ohio for yielding to me. I want to express my strong support in the amendment the gentleman has offered. I do think that we have overlooked one thing today. We are mandating the Congress and the President, but we have overlooked the American people, and they will give us the indication of what to do themselves, and they will do it loudly and clearly. That is why they have elected us to represent them, and they want us to act responsibly.

They will say:

We did not send you to the House of Representatives to be indifferent.

Mr. DU PONT. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from Delaware.

Mr. DU PONT. I thank the gentleman for yielding.

I might be tempted to vote for this amendment except for the fact that it did not provide for vote by concurrent resolution. Could I ask the gentleman why?

Mr. WHALEN. The legislative history would certainly show that it would be possible for the Congress, if it so chose, to act through concurrent resolution, or it chose to act through joint resolution that would be possible.

Mr. DU PONT. Would the gentleman not be willing to specify in his amendment that it be by concurrent resolution?

Mr. WHALEN. I would say to the gentleman from Delaware that we are not talking about 1973 when we have divided authority—a Congress of one party and a Chief Executive of the other party. We are talking about 10 or 20 or 30 years from now. I certainly would not want to bind the Congress as to what legislative procedure they should follow.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. BUCHANAN, and by unanimous consent, Mr. WHALEN was allowed to proceed for 2 additional minutes.)

Mr. BUCHANAN. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from Alabama.

Mr. BUCHANAN. I thank the gentleman for yielding.

It is not true that the gentleman and I in working on this amendment, with which I fully associate myself, which I offered in substance in committee and the gentleman supported, devised language to specifically provide that it could be by concurrent resolution if a future Congress should see fit to try that mechanism?

Mr. WHALEN. That is correct.

Mr. BUCHANAN. With the advice of counsel we so revised it, so that this would be possible; is that not correct?

Mr. WHALEN. That is correct. This certainly is an answer to the argument that has been lodged against it.

Mr. GILMAN. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding.

I rise in support of the Whalen and Buchanan amendment. I think that this amendment materially adds to the committee proposal. I urge my colleagues to support it.

Mr. WHALEN. I thank the gentleman.

Mr. KEATING. Mr. Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from Ohio.

Mr. KEATING. I thank the gentleman for yielding.

I rise in support of the amendment. The gentleman has explained the amendment very clearly and very succinctly. It is an important amendment, and its passage makes a difference as to whether or not I can support this bill.

Mr. WHALEN. I thank the gentleman.

Mr. HOWARD. Madam Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the gentleman from New Jersey.

Mr. HOWARD. I thank the gentleman for yielding.

I believe the President should have some emergency powers. There is a 120-day time limit set up, and certainly in 120 days we are not engaging in an emergency situation; we are waging a war. I believe that the President's right to wage a war should be able to be declared illegal without the Congress doing anything at all, because he has no power to wage war. I believe that if we do force action on the Congress, then the Congress is giving something up to the Executive which the Executive should not have, so I am forced to oppose the gentleman's amendment.

Mr. MAILLIARD. Madam Chairman, I move to strike the last word.

Madam Chairman, I do not want to take the 5 minutes. I just want to make it clear to the Members on the floor that this is probably the most crucial amendment we are going to deal with. I supported certain substitutes that were offered earlier because they differed in this respect. Frankly, there were provisions in some of those substitutes that I did not like as well as I like the general provisions of the committee bill, but I figured that we could work those out in conference and come out with a satisfactory bill.

I suspect that there are many of us that, if this amendment is adopted, can support the bill.

The minority leader has already indicated that if this provision is not modified, the President has indicated that the bill will be vetoed. There may be other provisions in whatever bill might come out of the House and the Senate that the President might find objectionable and conceivably even if this section is modified, there could be a veto. But I think that I would say to the principal proponents of the bill that the best chance of getting war powers legislation enacted and on the books is if we today eliminate this automatic effect of no action by the Congress. I suspect that very few Presidents like to have their power restricted, and whatever we have in the bill—and this is obviously our intention—I would suspect could be passed over the President's veto if we can get enough support for the bill on the floor of the House.

I know I have colleagues on the committee who would oppose the bill even if this amendment is adopted, but there are quite a few of us, I think, who can support it if this amendment is adopted, who will find it not possible to vote for this bill if this provision remains unchanged.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. MAILLIARD. I yield to the gentleman from New York.

Mr. WOLFF. If this amendment passes and we strike the triggering clause from the resolution, then what do we as Congress gain that we do not have?

Mr. MAILLIARD. I would say to the gentleman I think there are many other operative provisions of the resolution that have not been on the books before. There is the procedure for reporting, the procedure for expediting congressional action to make sure it is not subject to filibuster in the other body and not subject to excessive delay on the part of a committee that might view things differently than the majority of the Members of the House. I would say to the gentleman I think we have a great deal. And in section 4(c), which I know there are objections to, we do at least attempt, and I do not know whether we can constitutionally do it or not, to provide a mechanism by which by a simple majority vote of both Houses we can negate a Presidential action of which we disapprove. So we have all those things so I would consider the resolution for that reason a highly desirable resolution.

I find the notion however of a major change in national policy by failing to act so personally repugnant, and I am pretty sure it is unconstitutional, that I cannot vote for the resolution if that remains in.

Mr. WOLFF. Is it true the President said he would veto the resolution if both (c) and (b) were in the resolution.

Mr. MAILLIARD. That was the point I was trying to make if anybody cares

about having to pass it over a Presidential veto, and that this automaticity, the effect of inaction by the Congress, may make the difference between having the votes and not having them.

Mr. ZABLOCKI. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, 4(b) is the heart of the war powers resolution. In past Congresses we have passed resolutions which have provided for consulting and reporting. In the last Congress some of the criticism we heard was that after Congress received the report the legislation did not provide what Congress should do with it. Therefore, our committee in this session of the Congress wrestled for days and for weeks with the language. The very people who are now amending the language were parties to the effort of trying to bring in legislation which would be within the Constitution, and would be in keeping with the authority of the Congress under the Constitution in the warmaking powers. We came up with section 4(b).

The proposals by the gentleman from Ohio and the gentleman from Alabama are trying to correct what they claim or allege is a shortcoming of the committee version. They contend the committee version terminates commitment of troops by inaction, but the versions of the gentleman from Ohio (Mr. WHALEN) and the gentleman from Alabama (Mr. BUCHANAN) do not indicate, or do not spell out exactly, by what committee or what congressional action, whether by concurrent resolution or by joint resolution, how a termination or what they call a positive affirmation action will be taken.

I submit that, as I said earlier at the beginning of today's debate, the entire resolution must be taken into consideration and that section 4(b), which provides for congressional action must not be taken singly.

There are 535 Members of Congress, and I am sure one Member of either the Senate or the House of Representatives certainly would introduce a resolution affirming that we approve or disapprove, and an affirmative action will thereby be taken because of the provisions of the resolution triggering the legislative action.

One point we must bear in mind, that if the Congress passes a disapproving resolution, invariably the President will veto it. Then, the majority of the Congress, the will of the majority of the Congress is thwarted. One-third of either body will thwart the will of the majority. Here is where the 120-day termination comes into play.

When a President vetoes a resolution of disapproval and there is not a sufficient vote to override the veto, then within the 120 days the commitment of troops will terminate. I think this is indeed affirmative action.

Mr. WHALEN. Madam Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from Ohio (Mr. WHALEN).

Mr. WHALEN. If it is a concurrent resolution, is it subject to Presidential veto?

Mr. ZABLOCKI. Of course, the gentleman from Ohio fully knows that a concurrent resolution is not subject to Presidential veto.

Mr. WHALEN. Under the provisions of section 4(b), if Congress decides to resort to a concurrent resolution, then it would not be subject to Presidential veto.

Mr. ZABLOCKI. If the gentleman's amendment would provide that a resolution of approval be a concurrent resolution, and such a resolution was termed appropriate, using the gentleman's earlier language, appropriate for disapproval, then I believe he would have an amendment I could even support.

Mr. WHALEN. Madam Chairman, if the gentleman will yield further, we have heard a great deal today about why Congress should be required to vote one way or another on the question of war or troop involvement.

Could the gentleman give us the reason why we should not be required to? I do not think this question has been touched upon today.

Mr. ZABLOCKI. There is no doubt in my mind that we need not direct the Congress and require it to vote. I believe when we do have a commitment of troops in the future with a resolution introduced of approval or disapproval, the Congress will act.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FRELINGHUYSEN. Madam Chairman, I rise in support of the amendment.

Madam Chairman, the gentleman from Wisconsin has given an astonishing criticism of this proposal. He said that in previous years, war powers resolutions did no more than require reports and consultation by the Congress, and we had to do something with the reports. Then, in the next breath, he admits that 4(b) requires the Congress to do nothing.

He is against, in fact, Congress doing anything, either for or against action on the reports. I would simply like to repeat the question which the gentleman from Ohio asked him. Why should there be this fear of requiring action by Congress, if the reports point out that there is a significant development involving the commitment of our troops to hostilities?

The gentleman from Wisconsin has given an answer, and I hope he has a better one than he gave. That was, he is fearful of a veto if we should express our decision against what the President is doing.

I would suppose that if the executive and the legislative branches are on collision courses and both refuse to see the necessity of reaching agreement, that there is going to be trouble.

If we in effect recognize that the only way by which Congress can stop something of consequence is by inaction, then we are simply underlining our own futility.

I can see no justification for going to all the trouble of getting information about an involvement of our Armed Forces in hostilities, and then being unable to come to any judgment for a 120-day period; not to say the President's action is good, not to say it is bad—not to take any position but a position of doing nothing. If there is any way of demonstrating our own futility, it seems to me that this is it.

Mr. ZABLOCKI. Madam Chairman, will the gentleman yield?

Mr. FRELINGHUYSEN. I yield to the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Madam Chairman, I do not think that one-third of either body, either the House or the Senate, should control the constitutional question of war powers. Therefore, I say to the gentleman, the resolution from the committee, House Joint Resolution 542, does indeed provide for action.

There is no question that there is legislative, congressional action provided.

Mr. FRELINGHUYSEN. I might say to the gentleman that this resolution provides for action but it anticipates inaction. Of course it is possible for us to act. We do not need a 120-day period written into a law to give us the possibility of acting. That is there. That is an inherent part of our responsibility.

What proponents say is that it is possible Congress may act but we want to guard against the possibility we may not act, and we want to have a transformation of national policy on the basis of inaction. To my mind that makes no sense at all.

I have at the desk a provision to change the "concurrent resolution" in section 4(c) to "joint resolution." It seems to me we need to face up to the necessity of getting agreement between the executive and the legislative, and this may not be easy to achieve.

I might also point out that a declaration of war by Congress, which is our essential constitutional responsibility, takes the form of a joint resolution. It is conceivable that the President might not agree with a Congress bent on declaring war, and he would not want to implement it, and he might not sign that. Nonetheless even a declaration of war must be signed by the President. We do not declare war by a concurrent resolution because we fear a veto.

Let me say that I believe the intentions of the gentleman are certainly good, but I cannot see how he is adding one iota to our power by giving us the power to transform national action by doing nothing. This would be a reflection on our capacity.

Mr. ZABLOCKI. The concern of the gentleman from Wisconsin was as to how we would cope with the problem of one-third of the Congress dealing with this very important issue. How would the gentleman from New Jersey advocate that we correct this shortcoming in dealing with war powers, where really the majority will of the Congress should prevail?

Mr. FRELINGHUYSEN. I do not know whether the gentleman is suggesting that we should not have a bicameral legislature. Because of the nature of the legislative beast it is not easy to reach a decision. That is no excuse to say, because it is not easy, that on a matter of highest national consequence we should affect the result by doing nothing.

Mr. BINGHAM. Madam Chairman, I

move to strike the requisite number of words.

Madam Chairman, I rise in opposition to this amendment. I do so with reluctance because I have great respect for the sponsors of it.

I believe we must recognize that this amendment goes to the heart of this committee measure. As I indicated before, we have to recognize that there is no way—but no way—that the Congress can guarantee that a future Congress will take action, that it will say "yes" or "no". Many contingencies might prevent that, as has been pointed out.

Let us say the two Houses are not in agreement. The gentleman from Ohio was unable to answer the question as to what happens if the two Houses are in disagreement.

What will happen if in spite of the best laid antifilibuster plans there is a filibuster in the Senate, so we do not get action by the Senate?

We simply cannot guarantee action by the Congress up or down. We can only provide for what will happen if the Congress does not take action.

In our resolution we provide in that event the President's authority to carry on hostilities will terminate. There is nothing new about this action by inaction.

The power to declare war that the Congress has under the Constitution is an affirmative power. The Constitution does not say that Congress must vote "yes" or "no" on a declaration of war. If the Congress does not vote a declaration of war, if it is inactive and does nothing, there is no declaration of war.

What we have been seeking for in this legislation is some way to preserve the constitutional power of the Congress over basic questions of war and peace absent a declaration of war.

Madam Chairman, we have had over a hundred cases of hostilities where there has been no declaration of war in our history; we have had only a few where there has been a declaration of war. We are trying here to set up something comparable to a declaration of war, and that is an affirmative action which Congress would take to approve the hostilities the President has inaugurated after a certain length of time.

Now, on the question of the leaving for future decision whether it is going to be a concurrent resolution or a joint resolution, I simply cannot understand the position of the sponsor of the amendment. There is a question as to whether action by concurrent resolution will be constitutional, but it will be certainly a much more difficult question if we do not provide in this bill as a matter of law that the Congress can at some future time take action by concurrent resolution. If we leave that matter for future decision, for future argument, for future submission to a court, we are not fulfilling any responsibilities, we are not answering the question; we are asking for future trouble.

I hope this amendment, in spite of its excellent motivation, will be defeated.

Mr. DU PONT. Madam Chairman, will the gentleman yield?

Mr. BINGHAM. I yield to the gentleman from Delaware.

Mr. DU PONT. Madam Chairman, if I may refer to the point made by the gentleman from New Jersey, what this amendment really is doing is changing the presumption. Under the committee bill the presumption is that if nothing happens, the military action stops; under the amendment the presumption is that if nothing happens, the military action continues.

I believe that under the Constitution the presumption ought to be in favor of the Congress and not the executive.

Mr. BINGHAM. Madam Chairman, I thank the gentleman for his remarks.

Mr. FINDLEY. Madam Chairman, I rise in opposition to the amendment.

One would almost assume, Madam Chairman, from hearing the discussion during the last couple of hours that inaction on the part of the Congress is a very novel and strange way that the Congress has to prevent unwise policy. Exactly the opposite is the case.

Inaction has been the traditional way by which the Congress has rejected unwise policy, not only in the foreign field, but in the domestic field as well.

I call to the attention of the Members the simple fact that almost 9,000 bills have been introduced in this chamber this year alone, all of them recommending affirmative policy by the Government. Thank heaven we have not been required to vote yes or no to accept or reject all 9,000 of these bills.

I think it is hardly surprising really to learn that the President or that any President would resist an effort to enhance the authority of the Congress in the field of war powers.

Mr. YOUNG of Florida. Madam Chairman, will the gentleman yield?

Mr. FINDLEY. Madam Chairman, I have a few remarks to make first, and then I will yield to the gentleman.

Madam Chairman, the purpose of war powers legislation is to reduce the likelihood of Presidential wars—especially long ones—and to enhance the role of Congress in the war powers field.

This amendment has to be considered in the light of that purpose.

By any reasonable test, it is a serious mistake and should be rejected. It works just backward.

It inevitably will have the effect of enhancing the President's war powers.

It will reduce the likelihood that a future President will ask the Congress for a declaration of war, because any President will quickly conclude that the Congress is less likely to halt his action through the operation of the Whalen amendment.

Under it, the President will terminate the engagement in hostilities only if both Houses agree to direct the termination. Under the traditional war declaration, one House—just one—can cause the declaration to fail and therefore, war policy to fail.

A war declaration must pass both the House and Senate to be effective. Thus one House can effectively veto a war by failing to approve the declaration.

With the Whalen language, a President will be less likely to use the war declaration approach in dealing with Congress.

Also, the Whalen amendment does not say whether the resolution by which Congress may disapprove a war will be concurrent or joint.

By leaving the ambiguous language "appropriate to the occasion" in describing the type resolution to be used by Congress, the bill yields control to the President.

In signing or vetoing this bill, President Nixon—or any President will likely announce that the appropriate resolution must be a joint resolution. Can we expect anything else? He will be protective of Presidential power, as every other President in history has been, and do his best to protect full Presidential flexibility in war-making. He will say that a concurrent resolution, or a simple resolution, is inappropriate to any such occasion.

This interpretation would not, of course, be binding on future events, but inevitably it would be cited by a future President if the section became operative in a crisis.

This would mean that a President could seek to nullify by veto a resolution by the Congress to disapprove.

In this case the power of the President would be immensely enhanced, because only by two-thirds vote of both Houses, could the Congress effectively stop a Presidential war.

The Whalen language would reverse exactly the roles of the Congress and President. Instead of just one House being able to veto a war, the President would be able to veto a resolution agreed to by both Houses to stop a war.

The vote recently on the supplemental appropriations override illustrates perfectly the position in which the Congress will find itself if the Whalen amendment is adopted. The President wanted to continue acts of war in Cambodia. By majority vote the Congress voted to halt these acts of war. Because of the Presidential veto and the failure of bombing critics to muster two-thirds vote in both Houses, the bombing goes on.

Under the Whalen amendment Presidents in the future will be able to continue indefinitely Presidential wars simply by retaining the support of one-third of either House.

Mr. WAGGONNER. Madam Chairman, I rise in support of the amendment.

Madam Chairman, I had not planned to say anything on this proposal today, but there are two or three things I believe we need to put into perspective before we vote.

First of all, I think we could all almost agree that with the confusion that exists we should probably not be doing anything here today, because we cannot agree as to what we should really do. Most everyone would like to help, but the question is how. Certainly Mr. ZABLOCKI is deserving of praise for his responsible efforts as many are.

Here just a few days ago, before we adjourned for the 4th of July recess, this Congress day in and day out, over and over again was told that Congress should

make decisions and have responsibilty for what was being done in Southeast Asia and other military actions of this country because of what had turned out to be a bad experience with regard to Vietnam. Almost everybody I know had some misgivings from the very outset about Vietnam, and, boy, as Vietnam progressed we had more and more misgivings about Vietnam and the way Vietnam was conducted. But this Congress passed the Tonkin Gulf resolution to authorize the President to do what he thought he had to do in the best interests of this country. I think that President Johnson and President Nixon both did what they thought was best for this country under the conditions of that resolution.

However, whether you agree with me or not, it seems to me we are amending the Constitution here today by legislative act which we can't do by forbidding the Commander in Chief of the defense forces of the U.S. Government from taking police actions that he considers to be in the best interests of this country and which he believes to be necessary and in the best interests of this country, by causing him to cease some such actual action by not approving what he does. You choose now to legislate by inaction.

Now, you cannot have it both ways. You cannot stand up here when the shoe is on one foot and say that this is a congressional responsibility and Congress should stand on its two feet and assert its rights and lead the people to believe that you want to make these decisions and then turn around and say, "Well, maybe Congress should not become involved in these issues." If we do not act the President will have to halt action. Let him take the heat.

Let me tell you something: there is a vast gap between a police action and a declaration of war. There are some actions short of war that the Commander in Chief ought to take that are in the best interests of this country, and in some cases these actions might be terminated in less than 120 days, and in others it might take more than 120 days. Do you want to make the decisions or do you just want to criticize those who do make them?

Now, if you believe that Congress ought to make the decision, either approving or disapproving a police action such as this, then I suggest that you vote for this amendment, because I want to point out that if you do not, and you legislate by inaction that the only thing that the Commander in Chief has to do, if Congress does not act to approve or disapprove his actions or again I say set them aside because of inaction of the Congress, all the President has to do is to just wait 1 day after he has terminated these activities, and start all over again. That is all that it takes. He can start over for another 120 days. What would you do then? Are you in effect authorizing war for 120 days?

It might well be that public reaction would force the end to such actions, and force the Congress to come back and do something in a positive way, but we cannot have it both ways. We either believe it is congressional prerogative and congressional responsibility, or we believe it is the responsibility of the Chief Executive, the President of the United States. But, nevertheless are we willing to stand on our two feet and say "I approve," or "I disapprove"? Make a judgment as to whether it is in the best interests of our country, the United States of America, and say "I approve," or "I disapprove, Mr. President, what you are doing."

We cannot have it both ways.

But we will be legislating by inaction. Whereas just a few days ago this Congress was being told day in and day out that we have got to stand on our two feet and assert our congressional prerogatives. We run for cover now. What are you going to do if we become involved in the Middle East?

I say that we ought to, if we really believe that, vote for this amendment.

Mr. GOLDWATER. Madam Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from California.

Mr. GOLDWATER. Madam Chairman, I thank the gentleman from Louisiana for yielding to me. I would like to commend the gentleman on his remarks.

Madam Chairman, everyone of us is dismayed over what has happened in Southeast Asia for the past 9 years, but we must not let this experience, no matter how distasteful, lead us into precipitous action that we may later regret.

We are treading dangerous ground here. We are rearranging the Constitution, and I am not at all sure the Constitution can stand the disruption. It is indeed a flexible document. But, the bill before us today denies flexibility. It places rigid, almost fatal controls, on the constitutional prerogatives of the President as Commander in Chief. I do not think we want to do this. When the American people realize what we have done, if Heaven forbid, we do, then the hue and cry over this contemplated abolition of the constitutional doctrine of the "separation of powers," will be heard throughout the Nation.

Like everyone in this Chamber, I fervently want to restore the power of Congress. In my brief political career, nothing has characterized my political philosophy more than the desire to have government returned to the people and their elected officials. Only Congress can do this. But, in so doing, we have picked an item that can cause more confusion than a restoration of congressional power.

If Congress is going to assert itself and restore power to people, let us give our first priority to something we should know something about—domestic affairs. It seems to me that where Congress has failed most is on the domestic front. We created the Federal bureaucracy, not the executive branch of government. We passed the domestic legislation that created more unnecessary Federal programs than the taxpayer can afford. We gave the executive departments open-ended laws to be interpreted at some bureaucrats' whim and fancy. We created OSHA and EEOC, and other programs too numerous to mention, that are helping to destroy the free enterprise system by forcing the small businessman out of business. We gave the President wage and price controls which are blatantly unconstitutional. My colleagues the list is endless.

Yet, when we should be correcting these ills that have led to the current crisis in the "separation of powers," we find ourselves symbolically putting on the military tunic with pronouncements of "war powers."

Madam Chairman, history records that another Congress did the same thing back during the American Civil War, and it almost resulted in a divided nation. It seems that a Member of the other body with no military experience—although he possessed a commission as colonel—decided to lead some troops against some battle-hardened Confederates. Well, he got himself killed down the Potomac River at a place called Ball's Bluff. He had no business there. The Union troops had combat-tested commanders. But, those of you who know the story realize what happened. Congress formed a committee to investigate the loss of one of its own. The committee stayed in existence, and it hamstrung President Lincoln in his conduct of the war.

Let us not do the same thing here today. As many of my colleagues have so succinctly pointed out; we have proven methods of restricting the President from instigating dangerous foreign policy moves. We can cut off funds. The President is also subject to the voters. He is also subject to public opinion and the media. Yes, he is also subject to impeachment.

I sincerely believe had there been no Vietnam, had there been no congressional desire to atone for Gulf of Tonkin, we would not be here today, or at least we would be considering something else. The passage of this bill is not going to bring back the 50,000 brave Americans who died in Vietnam. It will not even restore an economy that has almost been wrecked by a guns-and-butter policy.

But passage of this bill will signal to both the free world and the controlled world that we are hereby abdicating our responsibilities in the community of nations. It will signal to the world that we prefer isolation, discredited as it is. It will signal to the world that the President of the United States, and hence the United States, is a paper tiger. It will be an invitation to Vietnam after Vietnam after Vietnam in every part of the globe.

We cannot stop war by enacting war powers. We could well perpetuate war, or at a minimum, encourage aggression which leads to war.

This is well-meaning legislation. It represents a thoughtful and legitimate desire on the part of all of us to prevent another Vietnam. I can assure my colleagues, however that it will not. We are a world power, like it or not. We are looked upon as a world power, like it or not. But, what the free nations of the world want to know is whether we are going to act like a world power. If not, then there could well be a rearranging of traditional alliances, especially among the smaller nations of the world. We turned away

from the world after World War I. It got us World War II. The war powers legislation today is a turn away from the world. We may not think so now, but it is. You cannot deny the leader of the most powerful democracy in the world the flexibility he needs to protect our interests and the aspirations of all people who yearn to be free.

Lets not make the mistakes of the past again. We can and should play a major role in foreign policy. But we must do it as a deliberative body. We can and should control the Executive within constitutional limits. But, let us not place the national security of the Nation in danger in our desire to reestablish congressional prerogatives.

Mr. FRASER. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I was not going to speak, but when I listened to the last speaker I thought perhaps the gentleman needed to be reminded of what the bill provides.

The bill provides, as it now stands, that both Houses shall vote on any resolution offered by a single Member of either House who supports the action of the President. In other words, if the President has a single supporter in either the House or the Senate that measure then must come to a vote on the floor of each of those bodies. So that there is absolutely no question about the fact that the House and Senate will have an opportunity to go on record.

What we are dealing with here is the case where the House and Senate cannot agree on a position, where they cannot come to some affirmative position in support of what the President is doing. Then, as the gentleman from Delaware (Mr. DU PONT) pointed out, in that case then the presumption lies with the Congress, and its constitutional responsibility to declare war or not to declare war, rather than leaving the presumption in favor of the President to continue on with a military action for which he has no specific authority.

But the main point I want to stress is that the way the bill reads now there must be a vote of both Houses.

So it is a great mistake to suggest that anybody is ducking any responsibility. We are dealing only with the contingency that the House and Senate may not agree.

Mr. FASCELL. Madam Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Florida.

Mr. FASCELL. Madam Chairman, I thank the gentleman from Minnesota for yielding to me.

Madam Chairman, as a matter of fact, the question of whether the Congress wants to take affirmative action is confronting us right now with respect to the issue that is raised by this amendment.

It is whether the Congress is going to have the courage to stand up now and be counted on whether they want a war to continue when the Congress has not acted. The question right now is whether we are going to have the courage for the Congress to speak affirmatively, that the presumption shall be that there can be no hostility or war without action by the Congress; and not that the President shall have the right to engage in hostilities or go to war without action of Congress until Congress either subsequently affirms or denies. The amendment thus disguises the whole issue. The test of affirmative action by the Congress will be met today and also any time under the pending bill when the President takes any action without authority of Congress.

Mr. FRASER. I just want to say this. I am very much troubled by this phrase "resolution appropriate to the purpose." I really do not know what that means, and given the importance of this matter, I think it really is not acceptable to leave it unresolved.

Mr. WHALEN. Madam Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Ohio.

Mr. WHALEN. I thank the gentleman for yielding. I think the gentleman has made a strong and most persuasive case for the Whalen amendment. The gentleman has indicated that it is almost certain that there will be a vote in Congress. That being the case, what objection does the gentleman have to putting it in black and white in section 4(b) as I propose?

Mr. FRASER. The problem is, it is one thing to force a vote on the floor of the House or the floor of the Senate. It is another thing to get an agreement by both Houses. All we are saying in effect is that in that case, then the presumption lies that the Congress does not authorize the war and the President must bring it to a halt.

Mr. WHALEN. The gentleman suggests, then, that in the event that 435 Members of the House of Representatives favor continuation of the involvement and 50 Members of the Senate disfavor it, the presumption is in favor of the 50 Senators?

Mr. FRASER. The idea is that under the Constitution it is only the Congress who has authority to declare war. The fact is, as it has been pointed out here repeatedly, there is no provision in the Constitution that says that if Congress cannot agree to declare war, the President can go ahead and make war anyway. But that is precisely what the gentleman's amendment will do.

Mr. BIESTER. Madam Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Pennsylvania.

Mr. BIESTER. I thank the gentleman for yielding.

Would it be correct that under the language of the Whalen amendment the majority of both Houses of Congress might have voted to stop a war then going on but not by a two-thirds majority, and the President had vetoed the action they took, and the war went on for months and perhaps for years, while a majority of the people have said it should be stopped? Is it possible under the Whalen amendment that that could happen?

Mr. FRASER. I think quite possible.

Mr. BIESTER. Would that be possible under the committee bill?

Mr. FRASER. No, it would not.

Mr. MAILLIARD. Mr. Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from California.

Mr. MAILLIARD. I thank the gentleman for yielding.

I should just like to correct the record. The gentleman said emphatically that under the bill as now written there must be a vote on the issue of approving or disapproving what the President has done.

Mr. FRASER. Providing there is at least one supporter, of course, in each body.

Mr. MAILLIARD. I would suggest that the gentleman read the bill, because there is an escape clause which says that "unless such House shall determine otherwise by the yeas and nays. So if one House decides to vote not to vote on the issue, then the whole national policy is immediately changed.

Mr. FRASER. That is similar to a motion to table, a motion to postpone, or a motion to defer.

SUBSTITUTE AMENDMENT OFFERED BY MR. STRATTON FOR THE AMENDMENT OFFERED BY MR. WHALEN

Mr. STRATTON. Madam Chairman, I offer a substitute amendment for the amendment offered by the gentleman from Ohio.

The Clerk read as follows:

Substitute amendment offered by Mr. STRATTON for the amendment offered by Mr. WHALEN: On page 4, line 2, after the comma, strike out "unless"; and strike out everything on lines 3 through 11; and insert the following: "If within that time the Congress has enacted appropriate legislation specifically disapproving such use of United States Armed Forces."

Mr. STRATTON. Madam Chairman, I hesitate to take the time of the Committee at this hour, but there are still a couple of major issues presented by this legislation that are troubling me, and I think they ought to be presented in the debate, whether they are approved or not approved, because, after all, we are legislating here for the future and not just for the moment.

I am troubled by the amendment offered by the gentleman from Ohio (Mr. WHALEN) for two reasons: first of all, because he requires that there shall be a vote taken. I do not know how anybody can actually require that Congress vote if Congress does not want to vote. This raises some serious problems. I think the most expeditious way of handling the matter would be under the procedure that we have long followed in the Reorganization Act where proposed reorganizations go into effect unless Congress specifically disapproves. So under my amendment if the President as Commander in Chief has committed armed forces, he can continue to employ them unless Congress specifically disapproves. That basically, of course, was the issue presented in the substitute offered by the gentleman from Indiana (Mr. DENNIS) but his substitute had a lot of additional wording.

My amendment would put this issue clearly and squarely in section 4(b) by

providing that the President can continue unless Congress by appropriate legislation specifically disapproves his action.

The second thing that disturbs me is that the gentleman from Ohio does nothing about section 4(c), and section 4(c), as the gentleman from New Jersey (Mr. FRELINGHUYSEN) pointed out a little while ago, gives Congress the power to rescind the President's action merely by concurrent resolution, which again raises a question of constitutionality and the query whether we can properly shortcut the actual legislative process in a matter of this magnitude.

So my amendment simply involves these two points. In place of the amendment offered by the gentleman from Ohio (Mr. WHALEN), it says first, that if we want to stop the action we have got to pass a positive act of disapproval and if we do not take that action the President can continue. Secondly, it eliminates this suggestion that we can properly take this act of disapproval by concurrent resolution. Those are the two basic issues to which my substitute addresses itself.

The reason I make these points is that I believe we are legislating for the future here tonight. I am no more enchanted by what we are hearing these days over the television on Watergate than anybody else. But I do not think it is a question here of whether we like Richard Nixon or whether we do not like him. We are trying to set legislation for all future Presidents of the United States. Who knows, we may have a Democratic President of the United States in 1977. I think we have got to think of what is best for this country and not what is best under the immediate political circumstances.

If we undertake to circumscribe the President of the United States it may have far-reaching consequences primarily because, as I indicated in the colloquy with the gentleman from Michigan (Mr. GERALD R. FORD), by putting too many restrictions on him, we could undermine the deterrent power of the President in dealing with potential foreign threats.

The President is after all Commander in Chief of the Armed Forces, and we are not changing that; and he is the only one who can properly negotiate with foreign governments. If the foreign governments know that Congress has him hog tied in advance, and that a third of one body of Congress can block anything he does the foreign governments are not really going to be deterred by what he says, are they? I wonder if President Kennedy could have gotten Khrushchev to back down in the Cuban missile crisis in 1962 if this legislation had been on the books at that time?

Finally I believe we ought to recognize that this legislation is a lot like the 22d amendment to the Constitution. The Republicans got that one through in an effort to try to repeal the third and fourth terms of Franklin Roosevelt, after the fact. This bill today is an effort to repeal the Vietnam war and the Gulf of Tonkin resolution, after the fact. I think both actions are silly, both of them are futile, and as a matter of fact both will turn out to have been mistakes, as the Republicans found in 1968 when they could have run President Eisenhower for a third term and he would have won, too, if it had not been for the 22d amendment.

So let us not think about the political game at present. Let us think about what we are doing to the security of this country and to our deterrent power by unwise and ill understood, as this debate today demonstrates, limitations on the power of any President of the United States.

Mr. MILFORD. Madam Chairman, will the gentleman yield?

Mr. STRATTON. I yield to the gentleman from Texas.

Mr. MILFORD. Madam Chairman, I commend the gentleman for his statement and I would like to associate myself with his remarks.

There is one basic fact that this body seems to be overlooking: "The need of this Nation to have an ability to deter wars."

Many more lives are saved by preventing wars than by fighting them. If a farmer has a mean looking dog tied near his door, it will deter burglars. On the other hand, if the burglar knows that the dog has no teeth, he will walk right through the farmer's door.

This bill, as presented by the committee, literally pulls the President's teeth. Any intelligent person—from anywhere in the world—knows that it takes a considerable amount of time for the Congress to act on complex matters. War or military actions are certainly complex.

I agree with just about every Member in this Chamber that the Congress should retain the power to declare war. Further, I agree that no combat action should be sustained without congressional approval. Parenthetically, no combat action should be stopped without a positive mandate by the Congress.

My reasons are really quite simple. Each of you, like me, have no more than 16 people on your staff. None of us have daily intelligence reports, confidential embassy reports, analysis teams, nor vast investigative groups. The President does.

None of us have dedicated staffs that spend full time evaluating foreign intelligence. The President does. None of us have people on staff that can minutely follow the vast economic and political situations taking place in every nation in the world. The President does.

The Congress, given enough time, certainly has the ability to oversee all of these functions. But the key word and key problem is time. The 120-day limitation in this bill is not sufficient time for individual Congressmen to become fully aware of the vast complexities that can produce a combat action. By acting, without complete information, we could do this Nation a horrible disservice.

The fate of the United States can easily depend on the actions of a few very small countries. A good example is our dependence upon a few small nations in the Middle East for oil. Even now, these nations can bring the United States to its knees by simply turning off the tap that feeds oil to the tankers.

They will not, lest the big dog at the door be turned loose. But, if the big dog is reduced to a debating session with no assurance that anyone can turn the dog loose, then this nation is simply inviting trouble.

Members must keep in mind that laws are made for all Presidents and for all situations. They are not enacted just to satisfy a Vietnam situation or a Watergate President.

I remind you that our President is elected by the people and, like you, accountable to the people. He is not a dictator. His powers, like yours, are clearly spelled out in our Constitution. It has served us for nearly 200 years and I still believe in it.

I would also like to remind you that all nations in this world are not like ours. We are a democracy. We understand government by the people. Other nations do not. They only understand power or implied power.

There are many nations that will react irrationally and unreasonably against another country if they feel that they have an advantage. This bill would give them that advantage.

I feel that the Stratton amendment, if adopted, would leave a deterrent power in the hands of the President, while also affirming the powers of the Congress. I would urge that you adopt it.

If the committee bill is not amended, it will certainly be vetoed by the President. In good conscience, I must agree with him and vote against the bill.

Mr. WOLFF. Madam Chairman, will the gentleman yield?

Mr. STRATTON. I yield to the gentleman from New York (Mr. WOLFF).

Mr. WOLFF. Madam Chairman, the gentleman obviously disagrees with the Founding Fathers and particularly Alexander Hamilton in his definition of the Commander in Chief because Hamilton said that the President's power would be much less than the power of a British king and it would amount to nothing more than being the supreme commander of the forces.

Mr. STRATTON. I cannot yield further, but of course I do not disagree with the Constitution. But the Constitution is not what Hamilton said. It is what has been written down in that document itself plus the way those words have been interpreted over the years.

Mr. WHALEN. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, I oppose this amendment to the Whalen amendment for two reasons. First, like the language of the present resolution, the Stratton language creates an escape hatch for the Congress. Congress is not mandated to vote on the important question of troop commitment to combat. Second, in enabling Congress to escape its responsibilities, this amendment, if adopted, would permit the continuation of combat in the absence of congressional action.

Therefore, I urge my colleagues to oppose the Stratton amendment.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from New York (Mr. STRATTON) for the amendment offered by the gentleman from Ohio (Mr. WHALEN).

The question was taken; and on a division (demanded by Mr. STRATTON) there were—ayes 25; noes 79.

So the substitute amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. WHALEN).

The question was taken; and the chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WHALEN. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by clerks, and there were—ayes 200, noes 211, not voting 22, as follows:

[Roll No. 351]

AYES—200

Abdnor	Gettys	Peyser
Anderson, Ill.	Gilman	Pickle
Andrews, N. Dak.	Ginn	Powell, Ohio
Archer	Goldwater	Price, Tex.
Arends	Goodling	Quie
Armstrong	Grover	Quillen
Ashbrook	Gubser	Regula
Bafalis	Guyer	Rhodes
Baker	Haley	Roberts
Beard	Hammer-schmidt	Robinson, Va.
Bell	Hansen, Idaho	Robison, N.Y.
Blackburn	Harsha	Rogers
Bolling	Harvey	Roncallo, N.Y.
Bray	Hastings	Rousselot
Breckinridge	Hébert	Roy
Brinkley	Heinz	Ruppe
Broomfield	Hillis	Ruth
Brotzman	Hinshaw	Sarasin
Brown, Mich.	Hogan	Satterfield
Brown, Ohio	Holt	Scherle
Broyhill, N.C.	Horton	Schneebeli
Broyhill, Va.	Hosmer	Sebelius
Buchanan	Huber	Shoup
Burgener	Hudnut	Shriver
Burke, Fla.	Hunt	Shuster
Burleson, Tex.	Hutchinson	Skubitz
Butler	Jarman	Smith, N.Y.
Byron	Johnson, Pa.	Snyder
Camp	Jones, Okla.	Spence
Carter	Keating	Stanton, J. William
Casey, Tex.	Ketchum	Steele
Cederberg	Kuykendall	Steelman
Chamberlain	Landrum	Steiger, Ariz.
Clancy	Latta	Steiger, Wis.
Clausen, Don H.	Lent	Stephens
Clawson, Del	Lott	Stratton
Cleveland	Lujan	Symms
Cochran	McClory	Taylor, Mo.
Cohen	McCollister	Teague, Calif.
Collier	McDade	Thomson, Wis.
Collins, Tex.	McEwen	Thone
Conable	McKinney	Towell, Nev.
Conlan	Madigan	Treen
Coughlin	Mailliard	Vander Jagt
Crane	Mallary	Veysey
Cronin	Maraziti	Waggonner
Daniel, Dan	Martin, Nebr.	Walsh
Daniel, Robert W., Jr.	Martin, N.C.	Wampler
Davis, S.C.	Mathias, Calif.	Ware
Davis, Wis.	Mathis, Ga.	Whalen
Dellenback	Mayne	White
Dennis	Michel	Whitehurst
Derwinski	Milford	Widnall
Devine	Miller	Wiggins
Dickinson	Minshall, Ohio	Williams
Dorn	Mitchell, N.Y.	Wilson, Bob
Duncan	Mizell	Winn
Edwards, Ala.	Montgomery	Wydler
Erlenborn	Moorhead, Calif.	Wylie
Eshleman	Mosher	Wyman
Flynt	Myers	Young, Alaska
Ford, Gerald R.	Nelsen	Young, Fla.
Forsythe	Nichols	Young, Ill.
Frelinghuysen	O'Brien	Young, S.C.
Frey	Parris	Young, Tex.
Froehlich	Passman	Zion
	Pettis	Zwach

NOES—211

Abzug	Bergland	Burke, Calif.
Adams	Bevill	Burke, Mass.
Addabbo	Biaggi	Burlison, Mo.
Alexander	Biester	Burton
Anderson, Calif.	Bingham	Carey, N.Y.
Andrews, N.C.	Boggs	Carney, Ohio
Annunzio	Boland	Chappell
Ashley	Bowen	Chisholm
Aspin	Brademas	Clark
Badillo	Brasco	Collins, Ill.
Barrett	Breaux	Conte
Bennett	Brooks	Conyers
	Brown, Calif.	Corman
Cotter	Howard	Randall
Culver	Hungate	Rangel
Daniels, Dominick V.	Ichord	Rarick
Davis, Ga.	Johnson, Calif.	Rees
de la Garza	Johnson, Colo.	Reid
Delaney	Jones, Ala.	Reuss
Dellums	Jones, N.C.	Riegle
Denholm	Jones, Tenn.	Rinaldo
Dent	Jordan	Rodino
Diggs	Karth	Roe
Dingell	Kastenmeier	Roncallo, Wyo.
Donohue	Kazen	Rooney, Pa.
Drinan	Kluczynski	Rose
Dulski	Koch	Rosenthal
du Pont	Kyros	Rostenkowski
Eckhardt	Leggett	Roush
Edwards, Calif.	Lehman	Roybal
Ellberg	Litton	Runnels
Esch	Long, La.	Ryan
Evans, Colo.	Long, Md.	St Germain
Evins, Tenn.	McCloskey	Sarbanes
Fascell	McCormack	Schroeder
Findley	McFall	Seiberling
Fish	McKay	Shipley
Flood	McSpadden	Sisk
Flowers	Macdonald	Slack
Foley	Madden	Smith, Iowa
Ford, William D.	Mahon	Staggers
Fountain	Mann	Stanton, James V.
Fraser	Matsunaga	Stark
Frenzel	Mazzoli	Steed
Fulton	Meeds	Stubblefield
Fuqua	Melcher	Stuckey
Gaydos	Metcalfe	Studds
Giaimo	Mezvinsky	Sullivan
Gibbons	Minish	Symington
Gonzalez	Mink	Taylor, N.C.
Grasso	Mitchell, Md.	Thompson, N.J.
Gray	Moakley	Thornton
Green, Oreg.	Mollohan	Tiernan
Green, Pa.	Moorhead, Pa.	Udall
Gude	Morgan	Ullman
Gunter	Moss	Van Deerlin
Hamilton	Murphy, Ill.	Vanik
Hanley	Murphy, N.Y.	Vigorito
Hanna	Natcher	Waldie
Hanrahan	Nedzi	Wilson, Charles H., Calif.
Hansen, Wash.	Nix	Wilson, Charles, Tex.
Harrington	Obey	Wolff
Hawkins	O'Hara	Wright
Hays	O'Neill	Wyatt
Hechler, W. Va.	Owens	Yates
Heckler, Mass.	Patten	Yatron
Helstoski	Pepper	Young, Ga.
Henderson	Perkins	Zablocki
Hicks	Pike	
Holifield	Poage	
Holtzman	Podell	
	Preyer	
	Price, Ill.	

NOT VOTING—22

Blatnik	King	Saylor
Clay	Landgrebe	Sikes
Danielson	Mills, Ark.	Stokes
Downing	Patman	Talcott
Fisher	Pritchard	Teague, Tex.
Griffiths	Railsback	Whitten
Gross	Rooney, N.Y.	
Kemp	Sandman	

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. ZABLOCKI. Madam Chairman, I ask unanimous consent that all debate on all amendments end at 7:15.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The CHAIRMAN. Since there is no objection, all debate will close at 7:15 on the bill and all amendments thereto.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama (Mr. BUCHANAN.)

AMENDMENT OFFERED BY MR. BUCHANAN

Mr. BUCHANAN. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: Page 4, lines 11 and 12, strike out the word "concurrent resolution" and substitute therefor the words "Bill or resolution appropriate to the purpose."

Mr. BUCHANAN. Madam Chairman, my amendment simply writes into section 4(c) the flexibility we sought to write into section 4(b). That is, it would provide that Congress could try a concurrent resolution to overrule Presidential action, but would not be confined to that.

The President has said that with no change in this language, he will veto the bill. This is the second provision which is required before final passage today, to avoid a certain veto. I think this puts the Congress in a more flexible position. It does not force the constitutional question.

I hope the amendment will be adopted.

As to the bill itself, I think we are trying to accomplish by a joint resolution what can be accomplished only by a constitutional amendment. The committee's attempt to clarify or change the constitutional powers of the Congress and the President through the joint resolution before us is imaginative, innovative, creative and ambitious. It is as imaginative as Alice in Wonderland, and approximately as rational. It is an innovative as the Edsel, and as viable a concept. It is as creative as the most advanced modern art, architecture or music, and about as understandable to ordinary citizens such as your humble servant in the well. It is as ambitious an undertaking as the construction of the Tower of Babel, and will bring like results of failure and confusion.

Madam Chairman, I must oppose this resolution on final passage precisely because it cannot achieve its desired end of reaffirming the constitutional prerogatives and warmaking powers of the Congress—an aim which I fully support. This can only be done, in my considered judgment, by means of a constitutional amendment or by the appropriations process such as in the recent Cambodian limitation in which case a simple majority of both Houses of the Congress can clearly prevail. These two courses are without question open to us. No other can succeed. The committee's course, however well intended, can only lead to frustration and failure, and I must firmly, if reluctantly, oppose it.

The CHAIRMAN. Are there other Members in the Chamber who wish to speak on the amendment offered by the gentleman from Alabama (Mr. BUCHANAN)?

Mr. DU PONT. Madam Chairman, I desire to speak on the amendment offered by the gentleman from Alabama (Mr. BUCHANAN).

The CHAIRMAN. The gentleman from Delaware is recognized.

Mr. DU PONT. Madam Chairman, this amendment in my opinion goes to the very heart of the bill. It is the worst amendment that has been offered today. We must keep the question of setting the war powers policy within the Congress by a simple majority where the Constitution has placed it, and it is not a question of trying to override a veto that the Executive should not be permitted to exercise.

I very strongly urge the defeat of this amendment.

The CHAIRMAN. The question is on

the amendment offered by the gentleman from Alabama (Mr. BUCHANAN).

The amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from New Jersey (Mr. FRELINGHUYSEN).

AMENDMENT OFFERED BY MR. FRELINGHUYSEN

Mr. FRELINGHUYSEN. Madam Chairman, I offer an amendment.

The clerk read as follows:

Amendment offered by Mr. FRELINGHUYSEN: Page 3, line 1, insert "and" after the semicolon.

Page 3, strike out lines 2 and 3.

Page 3, line 4, strike out "(E)" and insert in lieu thereof "(D)".

Mr. FRELINGHUYSEN. Madam Chairman, my amendment is simple, and I hope noncontroversial. There is a requirement in the bill that the President report within 72 hours a number of things, including the estimated financial cost of the commitment of troops. My amendment would drop the requirement for an estimate of financial cost. In the first place, it would not be easy to determine how much the cost would be. If there were figures available, it would be of little value to us, and might be of great value to an enemy where troops are involved.

It is my hope that we simply drop the requirement for an estimated cost, because it does not make sense.

The CHAIRMAN. Are there other Members who wish to speak for or against this amendment who are on this list? If not, the question is on the amendment offered by the gentleman from New Jersey (Mr. FRELINGHUYSEN).

The amendment was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Madam Chairman, the issue presented by this legislation has been before the Congress for several months. My first impression was that the enactment of a precise statutory scheme to involve the Congress in ratifying or rejecting any military activities to which the President has committed our forces was unnecessary, but that such an enactment would do little harm. This initial impression was based upon a recognition that the President could not normally engage our forces in any significant combat operations in secrecy, and that once engaged, such an involvement could not long continue without the acquiesence of the Congress.

Historically, Congress has been a willing partner in military operations which may have been initiated by Presidential action, with or without the concurrence of the Congress. Vietnam was no exception to this historical pattern.

Why, then the need for this legislation? Its proponents urge that it is necessary to reassert the proper role of the Congress under the warmaking power. I have always felt that this assertion is more rhetoric than substance. In my view, the ultimate power is vested in Congress. It always has been, and no statutory support is needed to buttress the plain command of the Constitution.

Even though the legislation adds nothing to the power of the Congress, it might be supported nevertheless on the theory that it is desirable to clarify the procedure under which Congress is to assert its power. But such a theory is hardly persuasive.

The initiation of major military action by this country is not a routine occurrence. It has occurred in the past at moments of great international stress. It is idle to think that any future decision of such magnitude is going to fit neatly into a preplanned scenario. It is far more realistic to assume that given an international state of affairs which has impelled a President to commit our forces, that President will report promptly to the Nation—not just the Congress—justifying his actions as necessary to the security of the United States or to peace in the world. It is also realistic to believe that the Nation—including the Congress—will, at least temporarily, rally in support of the President and will take such action at that time as may appear to be necessary. In my view, it will take such action notwithstanding any careful statutory scheme which we may enact today in an atmosphere which is absent the emotion of a national crisis and a Presidential appeal to patriotism.

In short, Madam Chairman, I view our debate today as perhaps necessary to our congressional egos, but as largely meaningless in terms of dictating a required course of action in the future.

Personally, I do not need to be reassured that Congress can, if it wishes, control the warmaking power of the President. Since it is my view that this legislation if ultimately enacted would be overlooked or repealed by a future Congress in responding to a future crisis, it is not my intention to participate in an idle act by supporting this bill today.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. BIESTER).

Mr. BIESTER. Madam Chairman, as a member of the National Security Policy Subcommittee which considered House Joint Resolution 542, war powers legislation, I am pleased to have participated in the efforts which can lead to a reassertion of congressional prerogative and influence in war power decisionmaking. The need is for legislation which will assure the exercise by Congress of its proper share of the responsibilities called for during the critical initial stages of a war effort. House Joint Resolution 542 satisfies this need.

In accepting a difficult challenge, Congress has undertaken to conceive legislation which both recognizes the mandate of the Constitution in conferring upon Congress the warmaking power and the reality of a 20th century world in requiring the President to respond flexibly to emergency situations.

At this point I would like to compliment my colleague, the subcommittee chairman (Mr. ZABLOCKI), for his untiring efforts to report an effective war powers bill, and extend my personal appreciation to the other members of the subcommittee, as well as the full Foreign Affairs Committee, for the extensive and spirited discussion which characterized the deliberations on this essential piece of legislation.

House Joint Resolution 542 attempts to fill gaps that have developed over the years as technology and the nature of world relations have outgrown a strict implementation of the Constitution's language in the area of war powers.

The American people have wearied of the drain of prolonged "undeclared" wars, and the experience of Indochina has convinced them that mechanisms must be instituted which would allow the legislative branch—the branch to which they are closest—a greater degree of determination and participation in decisions involving the ultimate commitment of resources, both human and financial. While I cannot speak for my colleagues or their constituents, residents of my congressional district have expressed a very definite opinion that the President's power to commit troops in an undeclared war must be limited. Responding to a recent district-wide questionnaire, 75 percent of my constituents back such a limitation. I believe this sentiment is shared by a majority of Americans.

According to the provisions of House Joint Resolution 542, the President retains authority to commit U.S. troops at a moment's notice in those situations where our national interest is under direct or imminent threat. To every extent possible, however, the President is urged to consult with Congress before such action is undertaken, and he must report to Congress, in writing, within 72 hours of such a commitment. Then, the President is given a 120-day period in which he may continue military activities without direct congressional approval. During this time, the President will have the opportunity to work with Congress in formulating this policy and to justify his actions before Congress and the American people. At any time within these 4 months, Congress may, through the passage of a concurrent resolution, revoke the President's authority to continue a military commitment. By the end of the 120 days, if Congress has not already enacted legislation either specifically granting the President the power to proceed with military activities or denying him the power through the passage of the concurrent resolution, those activities must cease.

This bill approaches a very serious problem in a very reasonable manner by attempting to codify how the decisionmaking operation should actually function in such a situation. The President is allowed to make the initial commitment of U.S. forces in his role as Commander in Chief, with or without specific congressional consultation. Within a 3-day time span, he must explain his actions to Congress, and by the end of the 120 days, if he has not been able to convince Congress of the rightness of his actions, his authority to continue is terminated.

If Congress were required to pass legislation denying the President the power to continue a U.S. military commitment, the President could veto such a measure and have his action upheld by a one-third plus one minority of only one House of Congress. In effect, then, a minority of either House could continue the combat commitment which originally had been rejected by a definite majority in both

Houses. Such a provision would further serve to strengthen the President's war powers and thwart the will of a congressional majority. When we speak of effective war powers legislation, the inclusion of a provision posing such an obvious threat to the will of the majority in such a critical situation is not what we should have in mind.

It is significant to note, I believe, that Congress only 3 weeks ago indicated its support for the concept of war powers as embodied in House Joint Resolution 542. The August 15 bombing halt provision and its inclusion in the second supplemental appropriations bill offer parallels to the legislation before us today. The passage of the second supplemental and its enactment by the President represent a compromise accepted by both Congress and the President. In it, Congress has permitted the President to continue his policy in Cambodia until a certain date while he has conceded that his authority will expire by that date. Congress has stipulated, and the President has concurred, that he may continue military activity only if Congress specifically grants him the authority to do so through legislation.

The similarities between the provisions of this resolution and the August 15 bombing halt measure are apparent. Furthermore, by its recent vote, Congress has underscored the importance it attaches to the proposition that if hostilities are to continue beyond the cutoff date it is incumbent upon proponents of continuance to initiate congressional action to that end. This is the process embodied in House Joint Resolution 542.

Concern has been expressed that a deadline date is, in effect, a license for whatever action, however extreme, the President may deem necessary. During the 120-day period, so this argument goes, the President could engage in excessive military hostilities in order to commit the United States to a particular position and gain public support for that position. While this is, of course, entirely conceivable, we cannot say with any real assurance that the imposition of a deadline necessarily will set in motion a rash of precipitous military actions. The lack of any congressionally imposed deadlines during our Indochina involvement did not discourage two Presidents from engaging in numerous extreme military initiatives for almost a decade; but the failure of Congress to set any deadlines did permit these Presidents a great deal of leeway to do as they pleased, including commitments that further escalated the war.

Under war powers legislation, a deadline date could elicit from the President a more careful planning of his course of action and a more prudent evaluation and assessment of the wisdom of its continuation. Failure to do so could easily serve to undermine whatever case he might try to build for its continuation beyond the deadline date. Therefore, although a 120-day period could afford a President the opportunity to be intemperate, it could just as logically convince him to be more restrained.

The burden of proof is on the President. He must demonstrate that the continuation of such action beyond 120 days is warranted. The responsibility for the decision to continue his action must be made jointly by Congress and the President. If Congress is to accept that responsibility, it must act affirmatively. Because the positive burden of proof is with the President—who initiated the military action and seeks to continue it—Congress can concur with his action only through an affirmative vote to endorse what he has done and what he intends to continue.

Given circumstances where a majority of Congress disagrees with a Presidential decision to commit troops, Congress must be in a position to have its will carried out. This legislation does provide the mechanism for such an affirmative action on the part of Congress. Sections 5 and 6 of the resolution provide for specific congressional priority procedures for the consideration of any relevant bill or resolution, and any Member may take advantage of the priority procedures through the introduction of a concurrent resolution.

If Congress agrees that a continued military commitment should be considered, it would bring such a matter up for a vote before the 120-day expiration date, and if the President has demonstrated the validity of his position to the satisfaction of Congress the commitment would be ratified by Congress through affirmative action.

I strongly believe that this legislation does not, as some Members contend, overlook Congress' responsibility to act affirmatively. Explicit provisions are made for this in the bill. Those who seek to end the hostilities even before the 120-day deadline can still do so, and the procedure is specified. Those who wish to continue the hostilities can do so, and procedures for this are also enumerated.

The critical distinction which must be made clear is that the burden of proof and the obligation to bring the matter to a vote lies with those who support the commitment and wish to see it continued beyond the 120 days. If such action fails it is not because Congress failed to act affirmatively but because Congress, through its deliberations, had decided that the President's position had failed to be justified.

In past decades when Congress has declared war, it has done so within a matter of hours of the act which precipitated the declaration. Times have changed as has the nature of war. But it seems doubtful to me that the President and Congress would be unable to determine, within the period of 120 days, whether a commitment of American troops and other resources was necessary and should be formalized. The specific time restriction on these deliberations forces a decision to be worked out. It avoids the costly and devisive indecision and delay which characterized our involvement in Indochina.

How we view the world may have a bearing on how we approach this resolution. If we accept violence and conflict as a "given"—a constant factor and the "way things are"—then, perhaps, a state of war is nothing out of the ordinary and should not be treated as such. In this case, war should not require any justification; it has built-in legitimacy. On the other hand, if our world view holds that peace, or the absence of conflict, should be the normal and desired state of affairs, those who wish to disturb the equilibrium should bear the responsibility of proving the reasons why. The resolution before us, as it is presently worded, views conflict—not its absence—as the state which requires justification. It is a strangely ironic position that would have us defend the maintenance of peace rather than the continuation of war as a national policy.

The National Security Policy Subcommittee and the full Foreign Affairs Committee have labored to draw up a bill realistic in its method of restoring a balance to shared Executive-legislative war powers authority. The Constitution sets forth the broad language within which we have worked, and we have taken great care to neither restrict the constitutional power of either branch nor expand the power of either beyond its legal limitations. This objective, I believe, has been successfully conceptualized in House Joint Resolution 542.

The danger in those amendments and substitutes which will be offered to section 4(b), in particular, is that they not only inhibit an appropriate delineation of congressional power which is constitutionally both proper and necessary, but they would serve to further increase Presidential authority in war powers decisionmaking. Alternate language being considered could provide the President with discretion he does not now possess or justify Presidential actions having no legal foundation. The purpose of war powers legislation should be the reassertion of the congressional role in deliberations, not amplification of the President's.

I am certain we can all agree in hoping that there will never be occasion to invoke the procedures contained in this legislation. But I also feel we should have learned some lessons from our drawn-out engagement in Indochina. One of those is that a mechanism is needed to assure Congress its rightful participation in the critical early decisions that can so easily lead to a much greater military commitment. What is more, the mechanism should include an effective means of restricting that commitment if sufficient congressional support for it does not exist. House Joint Resolution 542, as reported by the Foreign Affairs Committee, accomplishes this, and I urge its passage.

The CHAIRMAN. The Chair recognizes the majority leader, the gentleman from Massachusetts (Mr. O'NEILL).

Mr. O'NEILL. Madam Chairman, I rise in strong support of House Joint Resolution 542, the war powers resolution, as reported by the Foreign Affairs Committee. And I want to heartily commend and congratulate Chairman CLEM ZABLOCKI and the members of the subcommittee who have worked so long and diligently to give us a war powers resolution that has teeth in it. For this resolution is the product of a careful and conscientious study of the war powers issue over the past 3 years by the Na-

tional Security Policy Subcommittee. In my opinion, it is a rational and reasonable resolution, and it is the best possible approach to reassert congressional prerogative in the war and peace decision-making process.

The need for this resolution was apparent 3 years ago when the Cambodian incursion was ordered by the Nixon administration without any prior consultation with Members of the House and Senate. The truth of the matter is that the accumulated experience of 535 popularly elected Members of Congress should be brought directly to bear on decisions of war and peace. I firmly believe that the executive branch does not have a monopoly of wisdom in matters affecting national security.

All this resolution asks is that Congress be included in the war decision-making process.

All this resolution asks is that Congress, the voice of the American people, be consulted prior to the commitment of U.S. Armed Forces to hostilities abroad.

All this resolution points out is that only through such congressional and executive discussion and cooperation can the national unity necessary to support such commitments be obtained.

I think there is general concensus among the Members of this House that a need exists for legislation which would reassert the role of Congress in the war-making area. And the congressional action provisions contained in this resolution are the heart of any effective war powers legislation. For the central problem that war powers legislation must confront is the introduction and commitment of U.S. forces into hostilities abroad without prior congressional authorization. Vital to the preservation of the congressional power to declare war is the provision for automatic termination of hostilities unless Congress specifically approves the Presidential commitment of troops.

This resolution enables Congress to play an effective and useful role in the decisions of war and peace. To function effectively, particularly in the times of national emergencies, our system of government must exhibit a maximum amount of cooperation and communication between the executive and legislative branches. Only through this cooperation and communication can we achieve successful policy decisions.

House Joint Resolution 542 is a giant step toward achieving that objective, and I urge all my colleagues to support this important measure as reported by the Foreign Affairs Committee.

Madam Chairman, I want to congratulate the chairman of the subcommittee and the members of the committee for their outstanding work that they have done. It is my opinion that it is a rational and reasonable solution, and it is the best possible approach to restate the congressional prerogatives involving war and peace.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, I should like to have supported a good war powers bill, but unfortunately, with the defeat of the Whalen amendment, the bill as it stands leaves the President of the United States without the most elemental necessary power to even take necessary action to defend this country under definite and difficult circumstances, and I will have to oppose this ill-starred and sorry bill.

The CHAIRMAN. The Chair recognizes the gentleman from Kansas (Mr. SEBELIUS).

Mr. SEBELIUS. Madam Chairman, I yield to the minority leader, the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. GERALD R. FORD. Madam Chairman, unfortunately, the Committee of the Whole has not been successful in amending and changing the committee bill. I want a war powers bill, but, as I said during my comments in the amending stage, if we cannot get the House to play a positive role along with the Senate, in my judgment the committee bill ought to be defeated.

I urge the defeat of the committee bill.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. BADILLO).

Mr. BADILLO. Madam Chairman, I should like to ask the Chairman a question.

The bill does not have a definition of the term "Armed Forces." I should like to make sure that it is intended to include the activities of the Central Intelligence Agency where they carry out the same functions, or the functions that would be carried out under the Armed Forces. There is such an amendment pending in the other body. Would the Chairman look with favor upon this amendment in conference?

Mr. ZABLOCKI. First of all, the amendment deals with U.S. Armed Forces. But the gentleman from New York has called to my attention the proposal of Senator EAGLETON in the other body. I have had only a brief opportunity to look the amendment over.

Let me assure him that if the Senate passes that amendment, as a probable conferee, I will give it the fullest consideration and I believe my colleagues will do likewise.

The CHAIRMAN. The Chair recognizes the gentlewoman from New York (Ms. ABZUG).

Ms. ABZUG. Madam Chairman, I sympathize with the intent of the Foreign Affairs Committee in presenting this bill and I appreciate the time and effort spent in its deliberations. But I fear that H.R. 542 will do the reverse of what is intended and I therefore cannot support its enactment. I regret the rejection of several Eckhardt amendments, which I believe would have eliminated any possibility of undercutting the Congress constitutional warmaking authority.

Rather than limiting the power of the President to wage undeclared war, H.R. 542 may have the effect of enlarging that power. Section 2 of this bill directs the President "in every possible instance" to consult "with the leadership and appropriate committees of Congress before committing U.S. Armed Forces to hostilities or to situations where hostilities may be imminent."

This is a loophole wide enough to fly a whole sortie of B–52's through. A President could claim that national security prevented his consulting Congress, especially when he is the judge of whether hostilities are imminent. It is difficult to imagine a situation in which it would be impossible for the President to consult Congress except in case of a nuclear attack, when the President clearly would be free to respond immediately.

The other major deficiency in H.R. 542 is that it allows the President up to 120 days to continue a military action in the absence of a congressional declaration of war or a specific authorization for the use of U.S. Armed Forces. I am aware that section 4c provides that if the Congress should fail to act after 120 days the President would be required to terminate unauthorized military activity and that within those 120 days the Congress may require the President to disengage U.S. Armed Forces from hostilities abroad by concurrent resolution.

I favor these concepts, and recognize that they are the unique feature of this bill, but the fact remains that if H.R. 542 becomes law and we become engaged in military hostilities, if Congress, for whatever reason, should fail to act to stop the war within those first 120 days, the President would have 4 months of a warmaking power which he does not now have under the Constitution.

Our experience with the Gulf of Tonkin resolution leads me to the conclusion that Congress should carefully avoid adopting any legislation that might be interpreted as enlarging the authority of the President to wage war.

Today marks 132 consecutive days in the latest round of illegal U.S. bombing of Cambodia, over the expressed objection of both houses of Congress and the American people.

In the last few days, we have learned to our shocked amazement that the executive branch's illegal actions in Cambodia extend far back beyond the time when the Government first conceded that it was extending the war to Cambodia, unsanctioned and unauthorized as it was even then.

Yesterday, as a result of hearings by the Senate Armed Services Committee, the Defense Department admitted that in 1969 and 1970 at least 3,500 raids were staged by American B–52s on neutralist Cambodia. Records of these illegal bombing actions were deliberately falsified with the intent of concealing them from the Senate committee, the entire Congress, and the public. And all these illegal actions and the coverup were sanctioned by the President of the United States. If the Nation was not so absorbed at this time in the Watergate revelations, I believe that these latest disclosures of secret, illegal war actions, accompanied by deliberate falsifying of records and deception of the legislative branch, would by themselves be enough to indict the conduct of the President.

I believe it is of the utmost importance to prevent a recurrence of the Cambodian situation in which for 2 years the President, the National Security Coun-

cil, and the Defense Department deceived the Congress by concealing the information that American forces were bombing a neutral nation. This shameful violation of the law points up, I believe, the value of enacting legislation to require the President to report to Congress any military action undertaken without the authorization of Congress. Implicit in such a requirement would be that refusal by the President to provide the Congress with such information would be deemed malfeasance in office.

Under its existing powers, Congress has the authority to declare war or to stop any military action undertaken by the Executive. The Eckhardt amendments, whose adoption I supported, addressed themselves to those instances in which the President might act within what he veiws as his constitutional authority and provided that he then could not extend such action if the Congress ordered him to desist by concurrent resolution.

In the absence of these safeguarding amendments and in view of the 120-day warmaking authority allowed to the President under H.R. 542, I believe the wise course is not to attempt to rewrite the Constitution in this way and to reject this bill.

The CHAIRMAN. The Chair recognizes the gentlewoman from New York (Ms. HOLTZMAN).

Ms. HOLTZMAN. Madam Chairman, it is with great regret that I rise in opposition to the bill. I understand that the members of the Foreign Affairs Committee have submitted this bill with the greatest and most meritorious intention. I agree with that intention. But, I believe the bill instead of limiting Presidential war powers enshrines the unilateral warmaking powers on the part of the President for 120 days. I have studied the Constitution very carefully, and I do not believe the President has the power to begin or carry on a war without congressional approval for even 1 day, except in an emergency to repel an attack on this country. Nor, should he have that power.

House Joint Resolution 542 is therefore unwise if not unconstitutional. Instead of limiting the Presidential warmaking powers it legitimizes some of the worse abuses that have arisen.

Article 1, section 8, of the Constitution specifically grants to the Congress the power to declare war as well as raise armies. Although article II provides that the Executive shall be "Commander in Chief of the Army and Navy," this provision does not diminish the power granted to the Congress under article I.

The intention of the drafters of the Constitution with respect to the warmaking powers was very plain. They were well aware of the bitter experience under the British monarchy in which the king had the sole power to start a war and continue it without anyone's approval. The framers of the Constitution did not want to import into our Republic the abuses of an absolute monarchy. They, therefore, decided to split the warmaking powers into two parts.

First was the power to start a war. This they explicitly placed in the hands of the Congress.

Second was the power to carry on a war once it was authorized. This was explicitly placed in the hands of the President of the United States.

This premise is well documented in the accounts of the debates at the Constitutional Convention. For example, Messrs. Madison and Wilson both agreed that "executive powers . . . do not include the rights of war and peace." And Mr. Gerry expressed the view that he "never expected to hear in a Republic a motion to empower the Executive alone to declare war."

Alexander Hamilton, one of the strongest exponents of a strong Chief Executive, said:

> It is the peculiar and exclusive province of Congress, when the nation is at peace to change that state into a state of war; whether from calculations of policy, or from provocations, or injuries received: in other words, it belongs to Congress only, to go to war.

Subsequent statements also confirm that Congress has the sole right to commence a war, except in limited circumstances where the President, under emergency conditions, has the power to repel attacks on this country.

Thus, for example, in the middle of the 19th century, Abraham Lincoln, in voting against President Polk's unconstitutional military excursion into Mexico, stated:

> The provision of the Constitution giving the war-making power to Congress was dictated by the (fact that) kings had always been involving and impoverishing their people in wars . . . and they resolved so to frame the Constitution that no one man should hold the power of bringing oppression upon us.

The purpose of placing the power to commence a war in the hands of Congress was not simply to restrain Presidential action. It was also designed to prevent this country from getting into wars and sacrificing American lives and tax dollars without careful reflection and without a national consensus. In other words, by precluding war without congressional approval the Constitution's framers intended to make it more difficult to get into war.

As Jefferson stated in a famous letter to James Madison:

> We have already given, in example, one effectual check to the dog of war, by transferring the power of declaring war from the executive to the legislative body, from those who are to spend to those who are to pay.

Despite, however, the plain intent of the framers of the Constitution and the clear language of the Constitution itself, this bill permits the President to commence a war and continue it for 120 days without any approval from Congress.

Moreover, even the 120-day limitation on the President's ability to wage war is illusory. It does not contemplate the fact that in this age of advanced nuclear technology the President could launch without congressional consent a nuclear attack which could, within hours, destroy the face of the Earth. The fact that Congress has the right to stop unilateral Executive actions prior to the expiration of the 120-day period, or the fact that the President must cease such activity within a 120-day period absent congressional approval is totally irrelevant in this nuclear context. In effect, by passing House Joint Resolution 542, we would be conceding to the President the unilateral right to declare nuclear war, which in almost all instances would be terminated for good or for bad before Congress could take any action.

Even in conventional military endeavors, past experience demonstrates that allowing a President the right to unilaterally engage American forces into hostilities creates a momentum which is difficult for Congress to overcome even in the most reckless of circumstances. Men are lost in action. Prisoners are taken. And disengagement of troops is impossible due to their vulnerability. After the expiration of 120 days, Congress could be placed in a position of having to support the President lest the lives of American fighting men be endangered. It must do so, despite the fact that if it had had the opportunity to pass judgment on the initial effort, it would never have approved the President's actions.

In addition, by allowing the President to make unilateral decisions about warmaking even for 120 days, Congressional prerogatives are not only usurped in international affairs, but in domestic areas as well. For example, if Congress is to abide by a spending limit, as the President and Congress both agree it should, then the extent to which the President can unilaterally decide to spend money on military activities in essence determines the amount available to Congress for domestic needs. The Congress cannot capture control over domestic priorities if the pie to be divided here at home is going to shrink as result of the President's unilateral warmaking powers.

The price of our Indochina conflicts, for example, has been a rapid inflation, and the price of that inflation in one respect has been that we in Congress cannot enact desperately needed social programs in health, education, job training, and economic development, except by overriding Presidential vetos—justified in part on the grounds of inflation that was created in the first place by a war that the executive entered into unilaterally.

The second price we pay similarly is in the area of impoundment in which the President ostensibly on the basis of inflation imposes restrictions on spending in housing, education, and veterans' benefits. Thus, the Congress is left to pick up the pieces of military actions that it never in the first place declared.

Clearly therefore it is crucial to reassert the rights and responsibilities of Congress over the warmaking power in accordance with the Constitution. The way to do it, however, is not implicitly to grant to the President—as this bill does—the power to commence and conduct a war for 120 days in the absence of congressional approval.

The CHAIRMAN. The Chair recognizes

the gentleman from Hawaii (Mr. MATSUNAGA).

Mr. MATSUNAGA. Madam Chairman, I rise in support of the resolution. I think the very opposite is true of what the previous speaker, the gentlewoman from New York (Ms. HOLTZMAN) has said. House Joint Resolution 542 in fact signifies a reassertion of the sole constitutional authority of the Congress to declare war, and affords us our first opportunity to do so in this 93d Congress. I urge my colleagues to vote for passage of the resolution.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. CARNEY).

Mr. CARNEY of Ohio. Madam Chairman, I support this legislation. It is not everything I would like but I have never voted for a bill in my life which was everything I would like unless I wrote the bill, and then it was usually amended. This is as good a bill as can be expected. It reasserts the right of Congress to declare war. I am for the bill.

The CHAIRMAN. The Chair recognizes the gentlewoman from Oregon (Mrs. GREEN).

Mrs. GREEN of Oregon. Madam Chairman, I commend the committee for bringing this legislation to the floor. There has been much discussion about 4(b) in the legislation. I happen to agree with the committee. I see no reason why Congress should be affirmatively required to nondeclare a war. I hope the legislation will become law.

Madam Chairman, I want to sincerely compliment the Committee on Foreign Affairs for the legislation that is being debated today. I hope that this bill—or something very like it—soon becomes law.

It is idle to speculate whether or not such a law, had it been in effect a decade ago, would have prevented the tortuous years of the Vietnam conflict. No one here can know the answer to that. But what it hopefully would prevent is any future congressional abdication of its responsibilities to participate in the decisions to wage war. This, I believe, is the crux of the matter. We need some legislative mechanism to alert us to the possibility of literally backing into a full fledged war as we never intended to do—but did—in Vietnam. It may be proper to demand of youth to share in sacrifices made by the entire Nation, even as their forefathers did, but it is intolerable to send them off to fight and die for vaguely defined causes in undeclared wars while the rest of the Nation goes on with business as usual. The least we owe those who have elected us to represent them in the national legislature is the willingness to face that hardest of all decisions—whether or not to commit the Armed Forces of this Nation to war.

Some believe that section 4(b) of this legislation—the section which mandates a return of the troops if Congress does not affirmatively approve the President's action within 120 days—permits Congress to avoid that hard decision. I do not agree. This bill carefully provides for expeditious congressional consideration of solutions favoring or disapproving the President's action. I find it hard to imagine an instance when no resolution would be debated. But if such a situation occurred, I think it could only mean one thing: That the Congress universally disapproves continuance of the battle. Such a "no" nonvote could hardly be more deafening. Moreover, Congress should not have to affirmatively "nondeclare" a war. If the wisdom and necessity of the President's action is so much in doubt that he cannot convince the Congress to even vote on the matter, the battle should end.

Some have billed this legislation as an effort to curb Presidential power. I certainly see it that way also. But I prefer to give greatest emphasis to the positive—to the view that this legislation demonstrates congressional acceptance of its obligations to participate in crucial choices. If representative government means anything, it means collective decisionmaking on the countless solemn, painful, options constantly presented for our review. There is no way to insure that collective decisions will be wiser than those made by one person. A majority can be just as wrong as a minority and frequently is. This legislation does not guarantee that there will be no future Vietnams. All this legislation does is reassert the congressional duty to share in those choices for right or for wrong.

It is far easier to relinquish responsibilities than it is to discharge them. There are other areas—notably that of budget making—which Congress has also permitted to devolve mainly upon the executive. It is my belief that we must establish some mechanism similar to the Office of Management and Budget for our use here in the Congress if we are to once again fully discharge our obligations to decide on appropriate programs and appropriate funding for them on a national basis. Just as it has become clear that we lack the machinery to really effectively control the budget so it has also become clear in these last few years that we lack the legislative mechanism to really control the warmaking powers. This legislation simply provides that mechanism. All in all it would be easier to blame the executives for whatever failures we endure in foreign and domestic policy but I find that a singularly inglorious tactic. If we are to be judged wrong let us have the courage to be judged wrong for what we do, not for what we do not do. Let us accept our obligation to participate in the admittedly harrowing decisions that must be made. This legislation establishes the machinery for us to take our rightful place as our coequal branch of the Government in making that most awful decision of all—to wage war or not. I strongly support it, Madam Chairman, and I hope that the majority of this House will also.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota (Mr. FRASER).

Mr. FRASER. Madam Chairman, I can only say that when our next President or this President gets us into our next venture I predict now that this act will never be cited in a brief of the State Department as giving the President authority to involve us in overseas hostilities. The resolution is explicit on that point. We have nothing to worry about on that score and those who do worry about that simply have not read the resolution.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. FISH).

Mr. FISH. Madam Chairman, I hope that the committee bill will be approved by the House. It is my purpose to raise a question concerning the meaning of section 4(c) which I hope will be considered carefully by the conferees.

The significant provision of House Joint Resolution 542 is congressional oversight of the Executive. I understand section 4(c) is designed to extend the duration of that oversight and insure that Congress may review when it feels necessary the prudence of its earlier judgments and the actions of the President. Our experience in Vietnam and our inability to end that conflict after approving the Gulf of Tonkin resolution, stand as eloquent yet painful testimony to the need for binding congressional review of the President.

It is vitally important that House Joint Resolution 542 clearly address itself to a review of Presidential action and congressional response after the 120-day period. It is imperative that a procedure be spelled out in the language of the bill to guarantee the possibility of reconsideration. I do not think that as written section 4(c) does what is intended. Assuming an affirmative congressional response under section 4(b) the language of section 4(c) is inoperative and I fail to see where else reconsideration is authorized.

Madam Chairman, many of us perhaps feel that Congress already possesses the power to reconsider its legislation by amendments to authorization and appropriations bills. The problems we have had with just these types of measures demonstrate that this is not so. Numerous times, one or both Houses have passed end-the-war amendments only to be frustrated by failure to agree or by Presidential veto.

There are additional, valid reasons for the need of congressional review. In the initial report from the President, Congress may not receive sufficient or accurate information from the Executive. The revelations this past week by the Secretary of Defense that American planes were bombing Cambodia in 1969 and 1970 without the knowledge, much less the consent of Congress, illustrate this point.

Madam Chairman, I hope thought will be given to what I am sure will improve this important measure.

The CHAIRMAN. The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Madam Chairman, this is indeed an historic occasion. We have engaged in a full and very productive and free debate on an issue which is of the utmost importance to the people of our country, the question or the issue of peace and war. I believe the resolution before the House is a good resolution. I urge its passage.

Mr. BROYHILL of North Carolina. Madam Chairman, the issue that we are discussing today is a fundamental constitutional issue. Congress must attempt

to define a line between the proper war-executing powers of the President and his authority for committing U.S. military troops in a new hostile conflict. In certain circumstances, Congress can turn to clear constitutional language and historical precedent as a guide. Only Congress has the power to declare war, and the President as Commander in Chief has the clear responsibility to execute and direct that war.

The Indochina conflict, however, again raised an issue that has been plaguing constitutional experts for years: What is the role of Congress in a conflict without a declaration of war? The constitutional answer of prior years—congressional control over the Federal pursestrings—has proved inadequate. The complexities of the budget, the rapidity of events in the international arena, and the workings of the appropriations process have all served to point out the defects in the present approach to congressional control over the initiation of foreign military operations.

So the question is posed today: Can we fashion appropriate legislation that, cognizant of modern realities, will require Congress to exercise a responsible role in the foreign military operations of America and yet not infringe on the constitutional war-executing powers of the President? It has been argued that this legislation is not necessary because Congress already has the requisite authority. It is true that Congresss can withhold funds, pass substantive legislation, or declare war. The fact is that while Congress has had these authorities, it has not made use of them. This bill gives Congress clear and definitive procedures to be used if it again faces a situation involving the commitment of U.S. troops abroad. I am hopeful that Congress will responsibly exercise its power to define by law the limits of Presidential authority and congressional responsibility in warmaking. The effect will be a more realistic and thoughtful policy to guide the United States should it be confronted again as it has in the past with committing its Armed Forces to hostile conflict.

There are, I understand, several amendments that are being offered today to improve the committee bill, House Joint Resolution 542. I would like in particular to mention the amendment that will be offered by the gentleman from Alabama (Mr. BUCHANAN) and the gentleman from Ohio (Mr. WHALEN). The suggested amendment corrects some serious technical and procedurial flaws in section 4(b) of the committee bill.

As section 4(b) is now worded, a simple failure of Congress to act in the situation defined by House Joint Resolution 542 would prohibit the President from sustaining a U.S. troop commitment even for emergency conditions. Quite frankly, this section is an encouragement to Congress to take a walk when it should provide clear public leadership. One of the major complaints about U.S. involvement in Vietnam, in the mid-1960's, both in Congress and across the Nation was the failure of the White House to give firm guidance and a public commitment as to U.S. goals and efforts in Indochina. The history of the past decade shows the necessity of making a wise but clear public commitment as to our intentions. Section 4(b) fails that crucial test.

Clearly, if Congress is to enact substantive war powers legislation which would place Congress in the role of exercising warmaking responsibilities, that legislation must also authoritatively place upon Congress the necessary burden of responsible action.

The Buchanan-Whalen amendment corrects this defaul:. It mandates Congress to make a decision, on the public record, as to the wisdom and necessity of taking military action. I am convinced that mandate is in the best interests of a constructive balance between the executive and legislative branches, a sound and judicious public policy and responsive and responsible government.

Mr. PRICE of Illinois. Madam Chairman, the tragedy of Vietnam has taught us, if nothing else, that a cognizance of the pitfalls of incrementalism must govern our future military operations. The series of decisions made during the course of the conflict in the name of protecting our interests and furthering our goals in fact accomplished what no one could anticipate with any certainty and, to be sure, what no one desired. The war of attrition has been more costly than any mere lesson should ever be.

The Congress has been slowly gathering steam for affirmative action directed toward a reaffirmation of the constitutional power the legislative branch possesses in committing the Nation to particular military operations and a clarification of the twilight zone of concurrent authority which the framers of the Constitution gave the Congress and the President in the realm of the Federal Government's war powers. The Committee on Foreign Affairs has presented the Members with a resolution which would attempt to lead us from this bramble bush of authoritative crisis. I would commend utmost caution to my distinguished colleagues in this sensitive area. Ratification of the current manner of Presidential conduct will prolong the problems we are trying to eliminate, but stripping the Commander in Chief of emergency discretion would require close examination of congressional efficiency in times of crisis.

A compromise must be reached. In a matter which goes to the heart of our national security, we must be confident that our compromise is the correct one.

Mr. RARICK. Madam Chairman, I, too, am concerned over the usurpation of congressional prerogatives by the Office of the President. I do not, however, share some of my colleagues' emotional support for legislation advanced as limiting the President's powers while in reality approving this usurpation.

This is the case with the legislation before us—which is being sold to the House as necessary to limit the President's war powers. The Constitution clearly gives the Congress the exclusive power to declare war—it does not give this power to the President. I can see no advantage to the American people in giving in to the President and delegating to him a portion of that authority reserved by the Constitution to the American people through their elected representatives in Congress.

The Constitution is very clear and concise on the subject we are debating today. The language of the Constitution cannot be improved.

The Constitution cannot be amended by an act of Congress.

I will, therefore, cast my people's vote against this legislation before us. I am convinced that we must act and act now to keep the Government of the United States where it belongs—with the people as protected by the Constitution.

Mr. REID. Madam Chairman, I rise in support of the bill as reported by the Foreign Affairs Committee.

While not absolutely perfect, and while the 120-day limit should in my view be a much shorter period, nonetheless this bill does provide a new mechanism whereby Congress and, indeed, any Member of Congress can bring to a vote a preferential motion to end hostilities where U.S. troops have been committed. Moreover, the mechanism provided authorizes congressional action under a concurrent resolution, a vehicle which is not subject to Presidential veto, and requires a simple majority vote of both bodies of the Congress. If a veto were authorized, on the other hand, it could be sustained in either body of Congress by a simple one-third plus one. I believe the bill we have before us tonight would return the power to end hostilities to the American people, and to a majority of their elected representatives.

This legislation provides that any hostilities the President unilaterally enters into or any significant enlargement of hostilities already in progress shall automatically be terminated within 120 days unless, of course, Congress declares war or enacts special authorizing legislation.

In sum, I believe that this bill returns a specific measure of balance to the Congress and returns to them mechanisms to enable them to uphold their constitutional powers.

Mr. HARRINGTON. Madam Chairman, I rise today in support of the war powers resolution.

For the last 10 years, the American people have witnessed the unilateral commitment of American military forces to hostilities abroad by the President without prior consultation with, or authorization by, the Congress. The unparallelled expansion of Presidential warmaking power which has increased markedly since the early 1960's has now reached dangerous limits which threaten to undermine the system of checks and balances underpinning our constitutional system of government. The war in Vietnam and the Cambodian and Laotian incursions since 1970 have provided the initial impetus for a number of bills and resolutions of the war powers. The lack of prior consultation with Congress in all of these commitments has brought about a crisis in the relations between the executive and legislative branches.

Under the Constitution there exists a concurrent authority over the warmaking powers of the National Government between the Congress and the President. Since World War II, Congress power to

initiate war has been severely eroded. Up to now, it has accepted the President's explanations and, therefore, must share part of the blame for any constitutional imbalances, but I believe that some Members of Congress have come to see their mistake.

One of the major political phenomena of the last decade has been the simultaneous assumption of warmaking power by the President and the decentralization of that power within the executive branch. In the case of the Vietnam war, not only did the Congress lose control over the decision to go to war, but the President himself lost control over the bureaucracy and the military decisions being made at the Pentagon and in the field. This disturbs me as much, if not more than the debate between the Congress and the President. The answer to the problem lies not in reform of the executive branch, but in a return of authority over war power to the Congress. To restore the balance provided for and mandated in the Constitution, Congress must reassert its own prerogatives and responsibilities.

Madam Chairman, the war powers resolution now before us will insure the restoration of congressional authority. It directs the President to consult with Congress before and during commitment of U.S. forces to hostilities or to situations in which hostilities may arise, and requires submission of a formal report to Congress when such actions are taken without a declaration of war.

The resolution also denies the President authority to commit forces for more than 120 days without specific congressional approval, and permits the Congress to order the President to disengage from combat actions any time in the 120-day period. Legislation relating to such actions would receive priority congressional consideration.

In addition, the resolution makes clear that it is not intended to alter the constitutional authority of either the Congress or the President or alter existing treaties. The reporting requirements of the resolution would apply to any commitment of U.S. forces to hostilities at the time of enactment.

Finally, this resolution will insure that the system of checks and balances and the democratic process, explicitly delineated in the Constitution, will be restored in its proper form. The framers of the Constitution—sensitive to the warmaking powers of British kings—were explicit in their desire that the power to declare war and to raise armies be left to the legislature, the President acting as Commander in Chief after the onset of hostilities. The commitment of U.S. forces—except in dire situations which directly threaten national survival—should be taken only after full congressional and public discussion, if the country is going to be called upon to support commitments with its blood and treasure. Only through such discussion can the national unity necessary to support such commitments be attained.

The Executive does not have a monopoly on wisdom in matters affecting national security, and the accumulated experience of 535 popularly elected Members of Congress should be brought directly to bear on decisions affecting war and peace. By restraining rash executive action, House Joint Resolution 542 is entirely consistent with the Nixon doctrine, which would help foreign nations defend themselves with supporting and military aid, but reserve the commitment of U.S. forces only when our national interests are genuinely threatened.

Since 1970 we have seen a great number of war powers bills, resolutions, and joint resolutions introduced. They have all been of varying degrees of comprehensiveness. After some debate and amendment, the war powers resolution before us today emerged from committee on June 15, 1973. It provides the necessary flexibility for Presidential action in the advent of unforeseen circumstances, while assuring that Congress maintains its warmaking authority over the unchecked, unilateral decision of the executive branch.

The Foreign Affairs Committee, of which I am a member, has held hours of hearings on this legislation and listened to all points of view. I believe that the bill before us today is a decent one which deserves overwhelming support.

In the past month we have witnessed several clear examples of the unparalleled assumption of warmaking powers by the President and of congressional weakness in the face of such action. On Monday, the Pentagon confirmed the assertions of former Maj. Hal M. Knight that, even though B–52 bombing raids in Cambodia were not announced until May 1970, systematic bombing over Cambodia had been conducted since 1969 with the President's personal authorization.

It was also confirmed that the records of these illegitimate raids were falsified and/or destroyed under orders of superiors starting in February 1970. Today, we have learned the Pentagon has acknowledged that prior to March 1970, American B–52's staged repeated raids on Laos—also a neutral country. The magnitude of this coverup of illicit military activity, cloaked and spuriously justified in the name of national security impells Congress to assert its legitimate constitutional authority.

And yet last month Congress demonstrated its weakness in the fact of executive strong-arming when it failed to override the President's veto of the second supplemental appropriations bill containing an amendment to immediately cut off funds for the bombing of Cambodia. Instead, the majority of the Members of Congress agreed to a compromise bill, tailored to the administration's specifications, which allows the killing to continue legitimately until August 15. Worse yet, we abdicated congressional power and responsibility to stop the President and/or other administration officials from transgressing the congressional mandate because Congress will be in recess on August 15 and can only reconvene by Presidential order.

It is clear that the potential for such actions by the executive branch in the future are very real and must be eliminated now. The war powers amendment now before us must have the overwhelming support of the House. The failure to obtain the two-thirds majority necessary to override the veto of the second supplemental appropriations legislation cannot happen again. We need the support of the 35 Members who voted to sustain that veto to insure an override of the probable war powers veto.

We cannot abdicate congressional power totally. It is time to finally stand up for the constitutional rights we took an oath to uphold. The bill must pass without crippling amendments.

Mr. HANLEY. Madam Chairman, I do not believe that we are meeting here today to change the law of the land but rather to clarify it. The bill before Congress does not seek to mark new and unfamiliar paths. Neither should it be considered a result of partisan politics, for in delineating the subject of war powers in respect to the President and the Congress the bill seeks to affect not the parties or the officeholders but the institutions themselves. In placing a limit on the Presidency in this matter, our purpose is not to radicalize but to conserve, not to usurp unwarranted or unauthorized power but to insure that the powers intended by the Constitution for the Congress remain under the jurisdiction of the Congress.

It is a meeting which we have been slow to call to order. If the conflict in Indochina had not occurred we might never have had to confront this issue. For occasional manifestations of excessive executive action have characterized our history from the beginning and until now have not brought forth legislation of this type. Why now? Why should the Congress move to alter a system which has existed for the life of the country?

The answer can be found in the realization that excessive executive action during the last decade has been substantially different in both kind and degree than that which preceded it. The frequency and flagrancy of these acts, especially in regard to the Indochina engagement, necessitate that Congress take some sort of action.

Due to the lack of clear and concise definition as to the exact number in which troops can be committed to armed conflict, the Presidents during the past decade have been able to circumvent the Congress, to avoid bringing the issue of foreign troop commitments before the Congress. The country was able to function in the past with this ambiguity because of a mutual understanding and respect between the two branches over this matter. This understanding and respect has been seriously undermined in the last few years.

From recent events it seems clear that the Government cannot function in the manner envisioned by the Constitution if it must rely on ambiguities and understandings. The time has come to legislate and, therefore, to make clear an area where exploitation by the executive branch has effected a weakening of the intended system of checks and balances.

It often appears that the country's problems hardly have time to wait for the Congress. Year by year the 20th century with its frantic pace and its incessant demand for immediate attention seems farther removed from the more

determined pace of Congress. Ours is a time, whether we like it or not, that responds to executive rather than legislative action. The unilateral mandate of Executive order expedited by instant translation into newspaper headlines and television screens is cleaner, quicker, and more direct than congressional action requiring consensus.

Often it is necessary. The Congress recognizes this, especially in reference to the severe crisis which requires immediate armed response. By granting the President 120 days the bill reconfirms the Congress' expectation that on occasions which demand it the President will be able to respond without hesitation. Yet, acknowledging this, the Congress must also insure that simply because executive action is more decisive and direct it does not, therefore, become the accepted operating procedure of the country. Accountability to the people as represented by the Congress should not be considered by either the people or the administration as a complication to be avoided. It is a necessary and vital aspect of a functioning democracy.

Opponents of the bill fear that the restrictions and requirements will hamper the conduct of armed engagements. They foresee congressional action stranding the President in an embarrassing and even dangerous situation. In reply I can only say that there comes a point when further provisions become useless. Instead of entrusting the burden of whether a conflict should be continued or terminated to one man, his personal opinions and political persuasions, the burden will be shared by 535 others. In terms of the future of the Republic, this is where the decision rightfully belongs. We must eventually trust these people. We cannot insure that what they do will always be the best solution, but we can insure that the solution they reach is the consensus of the country rather than of one man.

Mr. MATSUNAGA. Madam Chairman, I rise in support of and strongly urge the approval of House Joint Resolution 542, the war powers resolution. This measure once enacted, will reassert the Congress' constitutional authority in the most important issue faced by any nation—the fateful issue of peace or war.

The gentleman from Wisconsin (Mr. ZABLOCKI) and his subcommittee are to be congratulated for bringing this most necessary piece of legislation for consideration of the House. As a sponsor of similar legislation, I am pleased to support the pending resolution. Its principal provision are:

First, it specifies that the President should consult in every possible instance with congressional leaders before committing American troops to hostilities.

Second, in every case where Congress has not declared war, it requires the President to submit a written report to Congress within 72 hours after he commits U.S. forces to combat outside the United States, sends combat-ready troops to any foreign nation, or substantially enlarges the number of combat-ready troops in any foreign country.

Third, unless Congress authorizes the President's actions within 120 days, House Joint Resolution 542 would require the cessation of the U.S. troop commitment. The commitment could be ended earlier by positive action of the Congress.

Regardless of the position we may have taken on our recent involvement in Indochina, Madam Chairman, we cannot deny that that war caused grave divisiveness among our own people. Certainly, one of the major underlying causes for this divisiveness was the lack of a declaration of war by that governmental body which is closest to the people and which has the sole constitutional authority to declare war—the Congress of the United States.

If we have learned but one lesson from the tragedy in Vietnam, I believe it is that we need definite, unmistakable procedures to prevent future undeclared wars. "No more Vietnams" should be our objective in setting up such procedures. The time for Congress to take this action and to reassert its constitutional role is long overdue.

Six times in the past 12 years, Presidents have mounted major military interventions without prior consultation with the Congress:

First, the Bay of Pigs, second, the intervention in the Dominican Republic, third, the bombing of North Vietnam, fourth, the incursion into Cambodia, fifth, the incursion into Laos, and sixth, the latest cycle of bombing in Cambodia.

Whatever our individual beliefs may be, relative to the merits of these unilateral actions by the Executive, I believe we can all agree that Congress should have played a more significant role in the decision to mount each of these actions.

Distinguished historians have assembled evidence on this matter which points inescapably to the conclusion that the Constitution envisions the Congress as the sole and exclusive repository of the power both to declare war and to judge its propriety.

It is my firm conviction, Madam Chairman, that this war powers legislation will, if enacted, serve the cause of peace by reestablishing the rightful constitutional role of the Congress in the war-making process.

As Members of that separate and independent branch of Government known as Congress of the United States, we have to a degree been guilty of acquiescing to the usurpation of congressional powers by the Executive. Perhaps, now is the time when we should take heed of the words of Justice Jackson who once wrote:

> We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.

By acting favorably on House Joint Resolution 542, we will prove to the American people that we do not intend to abandon our constitutionally granted powers and responsibilities.

I urge my colleagues to support the pending resolution.

Mr. ANNUNZIO. Madam Chairman, I rise today in support of House Joint Resolution 542, and I commend the Foreign Affairs Committee for introducing what I feel is a reasoned and reasonable response to this serious constitutional problem facing our country today. For more than 10 years, this Nation has been engaged in an undeclared war in Southeast Asia which has drained our resources, divided our people, and overshadowed our relations with all the other nations of the world. Even now, after the signing of the second cease-fire, the warfare continues in the air over Cambodia. At this time, within a week of our historic vote on prohibiting the use of any and all funds for continuation of this conflict, I feel it is important for this Congress to go on record strongly favoring controls which will help to prevent Presidents, using the vehicle of their Commander in Chief powers, from committing this country to large-scale hostilities which are undeclared by the Congress.

In drafting our Constitution, the Founding Fathers, ever wise to the ways of powerful kings, determined that in the United States it should be difficult for any President to get us involved in warfare. For this reason, although the President was granted the power of Commander in Chief and the spokesman for the country in the area of foreign affairs, the Congress was given equally powerful controls over the warmaking ability of this Commander in Chief. To the Congress was granted the power to raise and support the Armed Forces, to declare war, and "to make rules for the Government and regulation of the land and naval forces." The atomic bomb and the cold war changed this rather clear distinction between the powers of the President and those of the Congress. With the seemingly permanent need of this country for a standing army of some 3 million men, and sophisticated weaponry requiring several years of advanced research and development, the traditional role of Congress in planning for war evolved into a responsibility to maintain the country in constant readiness for war. And with this evolution, and the need to maintain secrets from the enemy, it became harder and harder for the Congress to maintain controls on the President and his foreign policy. However, this evolution in warfare and national security in no way diminishes the Congress' obligation under the Constitution to play an important part in determining when this Nation should involve itself in major hostilities, committing large numbers of troops and large quantities of our national treasure.

This practice of presidentially initiated warfare is actually a relatively recent phenomena. The point has frequently been made that, throughout our history, the United States has engaged in nearly 200 actions in foreign military hostilities in our Nation's history without a congressional declaration of war. But while it is true that this involvement at the President's discretion has often taken place, the Korean war was actually the first commitment of U.S. troops to a major war which did not involve the Congress in the decisionmaking process. As Senator STENNIS recalled, in introducing his war powers bill during the 92d Congress:

> I remember I was standing at the desk which is behind me now when the news came

into this Chamber that troops had been ordered into Korea. I knew that was the first time in our history a deliberate decision had been made to land troops, an army, in a war against another nation without a declaration of war by the Congress of the United States.

Since that time, Presidents, whether Republican or Democratic, have assumed the power to deploy troops, literally at their will, with justification after justification, and examples of the grave dangers to our national security if such action had not been taken quickly, and without consultation with the Congress. And we in the Congress have allowed this usurpation to go on without challenge—until perhaps today.

If we have learned anything at all from the Vietnam war, it must be that this Nation cannot tolerate a war in which the Congress and the Nation at large are not generally in agreement with the actions of the President. If the anti-war demonstrators, and our draft-age children have taught us anything, it is that the commitment of men and the authorization of money to carry on a major war must be a joint decision of the President and the elected representatives of the American people, the Congress. Ten years, 40,000 American lives, and countless billions of dollars after our initial involvement in Vietnam, we are faced with one of the greatest breakdowns in Executive/Presidential relations in our history. And all of this should not, must not, happen again.

It seems to me that now, as the Vietnam war draws to a close, is an especially good time to consider legislation which would help us to avoid similar situations in the future. As Secretary of State Rogers mentioned in his testimony on the war powers bill in 1971, war powers legislation should be considered "after the passions of Vietnam have faded into the past." This bill is not meant to curb the powers of a particular President. Rather, it is an attempt to curb any President in his response to the temptation afforded any Commander in Chief by the presence of an army of some 3 million men, many of them stationed in Europe and Asia, and a world where declarations of war seem less and less a part of warfare.

It has often been said that war is too important to be left in the hands of generals. I would like to add to that statement my feeling that war is far too important to be the decision of any one man. In these turbulent times, war and peace require the vigilance, expertise, and all-out effort of many loyal and patriotic men, and an informed and committed nation, It is foolish, in these days of nuclear weaponry, to isolate the President and his advisers from the advice and consent of the Congress, and to isolate the Congress and the American people from the reasoning of their President and his advisers. What is needed is more cooperation between the President and the Congress, not less, House Joint Resolution 542 admirably responds to the needs of our Nation today. It does not deprive the President of the ability to act in emergencies, in fact it gives him 120 days to act in an emergency situation. But it also requires cooperation between the branches by requiring that the President consult with the Congress, and it gives the Congress the opportunity to debate his action throughout that 120 days, and to curtail the use of U.S. forces if they feel the action is not justified.

We owe it to ourselves, and to our constituents, to create a situation, in law, which will prevent a future Vietnam. We must create a situation, in law, where Americans can know that their sons will be sent into hostilities which are clearly understood and clearly accepted, and that unless that action has the approval of the Congress, it should not continue until it becomes, like the Vietnam war, the longest war ever fought in our history, for a purpose still not clearly understood, and against an enemy still not clearly defined.

It is my feeling that this bill, House Joint Resolution 542, is a landmark in our history. It is an important step in returning balance to our governmental system, and it is my sincere hope that it can also prevent another Vietnam.

Mr. GUBSER. Madam Chairman, for several years I have felt the need for legislation which would curb the power of any President of any party to commit American forces to combat under circumstances which could lead to a prolonged conflict. Specifically and speaking in retrospect, I now believe that the manner in which we became involved in Southeast Asia was totally wrong and in conflict with the spirit of our Constitution.

I had hoped that the legislation currently under consideration would provide a vehicle where proper congressional curbs against Presidential warmaking authority could be enacted. But, unfortunately, this particular bill contains serious defects.

Much has been said about the need for Congress to reassert itself in the question of committing American forces to combat. I recognize that need, but this bill does not truly introduce congressional decisionmaking into each individual situation. It will not allow for a judgment of the facts and circumstances prevailing at the moment. This bill treats every incident which might occur in the future in the same manner. Congress would not vote affirmatively or negatively on the question of whether a combat commitment made by the President should be continued after the period of time specified in the bill. If Congress wishes to become a part of this decisionmaking process, then it should have the courage to vote for or against the commitment made by the President.

But I have a greater concern which is not readily apparent. In permanent legislation we must anticipate future possibilities. Let us assume that some future President, either a Democrat or a Republican, makes a determination that it is in the national interest to meet some international emergency with a combat commitment. Let us assume further that that President does not enjoy a friendly Congress. My question is: "If that President is so concerned with the national interest that he makes the commitment in the full knowledge that Congress would probably not approve this action at the end of a 120-day period, then is it not obvious that he would employ military power to an extraordinary extent in order to achieve his objective before expiration of the specified time period?"

This attempt by Congress to participate in the making of foreign policy without assuming the responsibility of voting for or against a Presidential act could then make a conflict so severe that it would have a greater chance of becoming a nuclear conflict than otherwise. Furthermore, a future enemy would not be inclined to negotiate in good faith knowing that an unfriendly Congress would effectively "pocket veto" a Presidential action within a specified period of time.

In such a circumstance we would be tipping our hand and minimizing the possibility for a negotiated settlement.

I think this bill is bad policy and I fully expect it to be vetoed if passed in its present form. The principle involved is so essential to the future of this Nation that I must, despite my objections, vote to give the House-Senate conferees a chance to remedy the defects. If the conferees bring back a bill which will require each and every Congressman and Senator to stand up and be counted and make the determination that the President's action should be continued or discontinued, I will support the conference report. If it does not contain such a provision, it will be necessary for me to oppose the report on the grounds that the bill would be compromising the negotiating position of those who constitutionally are responsible for the conduct of our foreign policy.

Mr. MORGAN. Madam Chairman, much has been said in this great debate about the Constitution, the war powers, and the ways in which those powers should be used.

In some respects, this debate has served to sharpen our understanding of the issues involved. In other respects, it may have helped to cloud them.

The latter is certainly the case on the basic issue involved in section 4(b) of the war powers resolution reported by the committee.

The issue here is not whether the Congress should act to stop a President from continuing a war—but who, under our Constitution, has the power to make war.

The Constitution, it seems to me, is very clear on this point.

It says simply that the power to make war is the power reserved to the Congress—and to no one else.

Now there was a very good reason why our Founding Fathers placed that provision in the Constitution—and no one should mistake their intent.

For centuries, wars were made by kings and rulers—not by the people. And the kings, in making their wars, sometimes for silly reasons, ruined their countries and subjected the masses of the people to tremendous hardships.

The costs of war have always been carried by the people—or taken out of their backs.

Our Founding Fathers did not want that situation to continue on this continent, in our country.

They wanted the people to make the decision whether or not our country would go to war.

That is why they reserved the power to make war to the representatives of the people, assembled in the Congress.

So we must start with that basic principle. The power to make war is the power of the Congress—not of the Executive.

This is the principle on which section 4(b) of the resolution before us is based. It says in plain terms that the President may not continue a war—or continue to involve our country in a situation which is likely to result in a war—without express authorization of the Congress.

That is why, after 120 days, the engagement of U.S. forces in hostilities abroad must stop unless the Congress says that it can continue.

Point No. 2, Madam Chairman, is that nowhere in the Constitution is there any provision that the Congress can only exercise its war powers by a two-thirds vote of both Houses.

Yet that is exactly what the proponents of the Buchanan-Whalen amendment are saying.

They are telling us that the Congress must be able to override a Presidential veto in order to stop the President from continuing to involve our Armed Forces in a war.

There is nothing in the Constitution that says that. Under the Constitution, the Congress can use its war powers by a majority vote—and make it stick.

Again, this is exactly what section 4 of the resolution provides.

It says that it takes a majority vote of the Congress to approve a war—and a majority vote, by the passage of a concurrent resolution which is not subject to a veto, to stop a war.

I hope, Madam Chairman, that we can keep those points in mind and not try to rewrite the Constitution this afternoon.

For this reason, I urge that the amendment and the substitutes be defeated.

Mr. GILMAN. Madam Chairman, certainly the serious business of warmaking should not be contingent upon inaction within the Congress. A firm support or refusal to support combat activities by a "yea" or "nay" vote on a resolution, as proposed by the gentleman from Ohio and the gentleman from Alabama, only strengthens the committee's war power resolution.

Madam Chairman, if Congress is to disapprove of military operations carried on in any part of the world, it is incumbent upon each Representative to voice his disapproval. By refusing to do so, our inaction is mere acquiescence to Executive powers.

Historically, the House of Representatives was not founded on the principle of inaction. The events of the past two centuries of American history would be radically altered if any Congress had relied on this paralyzing principle of inaction with regard to any of the critical issues confronting it. Certainly we should not begin to establish such a precedent with the serious content of our war powers resolution.

Madam Chairman, I strongly support the efforts of the Foreign Affairs Committee in restoring to Congress its constitutional responsibility of determining war policy and urge my colleagues to accept this responsibility.

Additionally, I concur with the thoughts of my two colleagues from the Foreign Affairs Committee and urge my colleagues in the House to voice their support of this strengthening amendment.

Mr. RAILSBACK. Madam Chairman, since the beginning of this century—and most dramatically since World War II—the decision to involve American forces in hostilities abroad has been concentrated increasingly in the executive branch of Government. Under the past six Presidents, it has become more common for the executive branch to commit Armed Forces of the United States to foreign lands without congressional approval. Korea and Vietnam, of course, stand out as the primary examples, but other examples, from the Congo to the Dominican Republic, may also be cited as cases in which the President has initiated action without the approval of Congress. Often the situations have been such that the President deemed that immediate action was necessary. However, such crises severely limit the constitutional requirement that the President come before Congress and ask for a declaration of war.

The Constitution assigns to the President the role of Commander in Chief. To the Congress, on the other hand, the Constitution gives the power to declare war, to raise and support armies, and navies, and "to make rules for the Government and regulation of the land and naval forces." The constitutional role of the Congress to declare war has given way to the maintenance of a military posture at all times ready for war. This, in no way, diminishes the Congress' obligation under the Constitution to play an important part in determining when this Nation should involve its armed forces in hostilities. It is clear to me that we must reassert our responsibilities. Henceforth, war must be the result of a collective decision by the President and Congress, and not an undefined involvement which grows and grows until the entire fiber of our Nation is torn.

It is for precisely this reason that I have sponsored legislation in this area and that I fully endorse and support House Joint Resolution 542. This resolution contains the best of many bills. I am convinced it is imperative that a firm agreement on constitutional roles of the executive and legislative branches of our Government be reached in this Congress. Without it, the cooperation which is essential for our national security will not be realized. I urge adoption of House Joint Resolution 542.

Mr. BOLAND. Madam Chairman, I support House Joint Resolution 542, the War Powers Resolution of 1973.

This resolution would reassert the constitutionally defined role of the Congress in the war making area. It places significant restraints on Presidential commitment of U.S. Armed Forces to combat activity without congressional consent.

There has been an increasing concern on the part of the American people and Members of Congress over the war powers issue in recent years.

My desire to arrive at some reasonable solution to the issue was expressed in legislation I have sponsored, H.R. 1477, which would provide a procedure for the exercise of congressional and Executive powers over the use of any Armed Forces of the United States in military hostilities.

Madam Chairman, American ground troops have been withdrawn from Vietnam and Congress has voted to cut off all appropriations for American bombing and combat activities in Cambodia and Laos by August 15.

Now is the time for Congress to define the powers of the President to engage in military hostilities abroad without a congressional declaration of war.

With this resolution, the American people through their 535 elected Members of Congress, will have a greater voice in expressing their views on National decisions affecting war and peace or the lives and deaths of American servicemen.

The resolution reported from the House Foreign Affairs Committee is a reasonable and responsible solution to the very challenging and complex war powers issue. I want to commend the gentleman from Wisconsin (Mr. ZABLOCKI) and members of his subcommittee for the fine job they have done in achieving this objective.

The resolution directs the President to consult with Congress before and during commitment of U.S. forces to hostilities or to situations in which hostilities may arise.

It requires submission of a formal report by the President to Congress when such actions are taken without a declaration of war.

Also, the resolution denies the President authority to commit forces for more than 120 days without specific congressional approval.

It further permits the Congress to order the President to disengage from combat actions any time in the 120-day period. Legislation relating to such actions would receive priority congressional consideration.

Mr. DRINAN. Madam Chairman, the war powers legislation before us—House Joint Resolution 542—proposes an unconstitutional delegation of authority to the President. Article I, section 8, of the Constitution specifically grants to the Congress the power to declare war as well as raise armies. Although article II provides that the Executive shall be "Commander in Chief of the Army and Navy;" this provision does not diminish the power granted to the Congress under article I. Congress cannot give to the President the power to make war unilaterally.

As Jefferson pointed out in a 1789 letter to Madison, the purpose of placing the power to declare war in the hands of Congress was to aid the cause of peace:

We have already given, in example, one effectual check to the dog of war, by transferring the power of declaring war from the Executive to the legislative body, from

those who are to spend to those who are to pay.

The only exception to this constitutional requirement has been carved out pursuant to the "sudden attack doctrine." This doctrine recognizes that the Executive can respond to an unannounced, belligerent attack or other grave emergency pending congressional authorization where the failure of the Executive to act unilaterally would paralyze the country. The President is nonetheless required to come to Congress as soon as practicable.

The legislation before us will permit the President to wage war, or launch nuclear war, for up to 123 days without any check. While it is true that Congress may, by acting affirmatively prior to the expiration of 123 days, inhibit the President from making war, the damage would already be done. The psychology of the Vietnam war relied upon by the executive branch through these long years of killing in Southeast Asia, has been that the American public cannot make decisions which will affect our POW's, our men missing in action, and our ground troops, which would be precipitous. One of the fallacies of the proposed legislation is that this same psychology will be immediately available to an Executive who is permitted to wage war unchecked for 123 days, and who can then claim to have lost prisoners of war, to have men missing in action, and the need for protecting troops in vulnerable positions.

Specific language in this bill also troubles me. For instance, section 2 provides 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.

What is "every possible instance?" Who are the "leadership and appropriate committees?" Does pushing a button and launching nuclear warfare constitute "committing Armed Forces?" What are "hostilities?" When are those hostilities "imminent?" And who decides whether there are hostilities and whether they are imminent? The bill is silent in answer to all of these questions.

In section 4(b) of this bill, I read that the President shall terminate any commitment and remove any troops unless the Congress enacts a declaration of war "within 120 calendar days after a report is submitted or is required to be submitted." What happens if this report is submitted 3 years later? Should not the language rather read, "within 120 calendar days after a report is submitted or is required to be submitted, whichever is earlier"? A similar problem is raised by section 5(a) of this bill, which provides that any resolution or bill introduced pursuant to section 4(b) at least 45 days before the expiration of the 120-day period shall be reported out to the full House.

The question of what happens if the bill is introduced 44 days before the expiration of the 120-day period is left unanswered.

Perhaps the most intriguing statement in the Act is proposed in section 8, which states that—

> Nothing in this Act 8(a) is intended to alter the Constitutional authority of the Congress or of the President . . .

Have we not learned from our Cambodian bombing that the Administration is capable of carrying out the kind of military effort that the Constitution expressly prohibits through the safeguard of congressional approval. The need here is to place a real check on the Executive branch. The Congress must enforce the constitutional requirements that war cannot be conducted in the absence of its formal and exclusive declaration. This bill carves out of this congressional power an exception to give the President the right to conduct warmaking operations until such times as the two Houses of Congress by a simple majority agree that we should not do it. I cannot support any bill which proposes such an extension of warmaking authority to the President. The Constitution does not give the Congress the right to insist upon disengagement, it gives Congress "the power to declare war."

We must not willfully erode the power of Congress. To the contrary, we should reassert our constitutional role by defeating this legislation.

Mr. LENT. Madam Chairman, I rise to state some of the reasons why I am voting against final passage of House Joint Resolution 542, the War Powers Act of 1973. While I believe the time is long overdue for the Congress to reassert its historical and constitutional responsibilities over war powers, House Joint Resolution 542 contains a basic defect which constrains me to vote against it. Specifically, section 4(b) requires the President to terminate any troop commitments after 120 days, unless Congress enacts a declaration of war or a specific authorization for use of U.S. Armed Forces. In other words, congressional inaction would have the effect of making national policy through default, the very effect we are trying to avoid.

The Whalen amendment, which I supported, would have corrected this flaw in the committee bill by requiring that within 120 days of the receipt of a report of the President as required by section 3 of the act, Congress must take affirmative action by either approving, through appropriate resolution or a declaration of war, or disapproving, the Presidential action. Likewise, the Dennis and Eckhardt substitutes, which I also supported, would have corrected this flaw and enabled each Member to declare his views—yes or no—when the President commits U.S. Armed Forces to combat. Regrettably, all of these alternatives failed to pass, leaving intact the basic committee bill, with its premium on inaction and potential for dangerous uncertainties.

This particular attempt to limit the President's responsibility and ability to defend the United States strikes me as grossly ill conceived and is probably unconstitutional, as well. Is this body so weakened and ineffective that it would even consider inaction on a matter of such national consequence as the commitment of U.S. Armed Forces to combat?

As most of this House is aware, I am a firm opponent of unlimited Presidential authority with regard to the use of our Armed Forces, and a strong supporter of a constitutional pattern of shared responsibility in this area as between the executive and legislative branches of Government. But that pattern, which requires concurrence and cooperation between Congress and the President, should not be constructed upon inaction on the part of Congress as one of its mainstays. This is too uncertain a foundation on which to build a workable constitutional relationship, and will do nothing to instill in the American people confidence that the system can work, or respect for the Congress as a legislative body.

Madam Chairman, I do support the concept of a war powers act. Those provisions in House Joint Resolution 542 that require the submission of Presidential reports to Congress on the commitment of U.S. Armed Forces are highly commendable, as is the imposition of a time limitation on the commitment of U.S. troops without congressional approval. But I cannot understand how we would be adding one iota of power to Congress by providing that, as a matter of highest national consequence, we should affect the result by doing nothing. For this reason, I urge the defeat of the resolution now before us.

Mr. LEGGETT. Madam Chairman, I would like to commend Mr. ZABLOCKI and the Foreign Affairs Committee for bringing the important matter of the Congress war powers before the House at this time.

The timing is particularly appropriate, if not downright psychic. Last month, this body put an end to that Indochinese albatross that has hung around the neck of this Nation for some 19 years. If this House goes ahead and passes an effective war powers resolution today, this session will probably go down as one of the most historic in the history of the Republic. Before we begin to celebrate, however, I think that we better be very careful what we do in the war powers area.

It seems clear to me that the reason it took 19 long years to recognize our mistake in Vietnam was that the Congress, during this period, played second fiddle to the White House as far as orchestrating national foreign policy was concerned. Vietnam cost us some 56,000 American lives and $200 billion in direct expenditures. It obligated us for another $200 billion in veterans' benefits, and has caused the greatest national rift since the War Between the States. Yet, technically Vietnam was not a war, as it was never declared by Congress.

The Vietnam tragedy began within the impermeable walls of the executive branch, and it was largely conducted within those same walls with little or no congressional input. All four Executives that prosecuted the Vietnam war came to the Congress for advice as little as possible. President Johnson did come down here long enough to sell us the Tonkin Gulf resolution, but after we gave him that broad authority he rarely bothered with us.

President Nixon has been even less responsive to congressional will. Despite the repeal of the Tonkin resolution, and

the numerous expressions of congressional opposition to the war, this administration set about to prolong the war in the south for 4 needless years, engage in massive bombing of the north, as well as expand American involvement to the jungles of Laos and Cambodia.

It now appears that this nightmare may end on August 15, but do not hold your breath. As Clayton Fritchey pointed out in the Washington Post on Monday:

> The President is a very resourceful politician and he still has some cards to play in the continuing fight with Congress over ending all U.S. military action in Cambodia, Laos, and Vietnam.

I would expect that before the first of the month the President will say that an extension of the bombing is necessary because the negotiations are at a critical level. Do not believe it. We are no more nearer a peace in Cambodia than we are to one in South Vietnam.

Whatever we do today, we better make certain that this situation cannot reoccur. While I do believe that House Joint Resolution 542 is an aggressive measure, and is a definite improvement over both the Senate and the former House version, I think it contains certain liabilities.

The main section of this resolution provides that within 120-calendar days of submission of a Presidential report to the Congress regarding commitment of U.S. forces the action must cease unless Congress enacts a declaration of war or provides specific authorization for the action. The intent of the section is to force the President to seek congressional ratification for any involvement of U.S. troops on or over foreign soil. I certainly agree with that intent. What I do question is whether it is going to work.

Under present circumstances, it is the executive branch that controls the mood and scope of any debate of national significance. Presidents Eisenhower, Kennedy, Johnson, and Nixon, with their immense political power and their vast access to the media, succeeded in defining for the country and the Congress what Vietnam was all about—what constituted victory and what constituted defeat. The Congress, in Vietnam, was faced with a fait accompli; it was either support the troops or face the extermination of those troops in South Vietnam. Given this state of affairs, it is not surprising that we tended to accede to the President. The situation may not be any different under this measure.

The Stennis, Javits, Eagleton war powers bill would allow the President to commit U.S. troops for up to 30 days in certain specified circumstances. While I think that 30 days is preferable to 120, I do not believe that a 30-day time limit will prevent the President from embroiling this Nation in a conflict from which we cannot withdraw.

Looking back on Vietnam, one of the biggest impediments to the successful formation of an antiwar sentiment in this country was simply a lack of independent information. For years, the only news we received from the war zone came straight from Pentagon briefings. Not surprisingly, for years this Nation was getting a picture of Vietnam taken through rose colored glasses. Not until the press stopped relying on "5 o'clock follies" did the Congress and the Nation get a clear, unbiased view of what was going on over there.

Under House Joint Resolution 542 the Congress will have to seek out independent information on the President's action, and they will have to get at that information in less than 120 days.

There is no simple resolution to this question. The President, as Commander in Chief, should be able to defend the country from direct attack, but he should not be allowed to commit us to an extended conflict without prior congressional approval. The answer, it seems to me, would be to explicitly define just how far the President can go as Commander in Chief.

At the beginning of the 93d Congress I introduced House Joint Resoution 315, which exemplifies my thinking on this matter. This resolution would explicitly define "war" as used in the Constitution as any international combat situation to which 5,000 air, sea, or land armed combat forces are committed outside the United States for more than 10 days.

The President could respond to a Pearl Harbor type situation, but if he intended to commit troops for more than 10 days he would have to come to the Congress for support. It may be that even 10 days is too long. It is conceivable that even in this short span of time the President could exert enough influence to make congressional input moot. Nevertheless, I am convinced that we must establish a clear, and hopefully effectual, limitation on Presidential prerogative in this area, and retrieve our constitutionaly authorized "power to make war" and save the peace.

Mr. DONOHUE. Madam Chairman, I most earnestly urge and hope that House Joint Resolution 542, will be resoundingly approved by the House.

This resolution is designed to reassert and reaffirm the traditional constitutional prerogative of the Congress to participate in the war and peace decisions of our National Government that so vitally affect the lives and destiny of the American people and the inhabitants of other countries throughout the world.

Madam Chairman, there is little question but that there exists a substantial majority feeling among the Members of this House that the time has come to revive and renew the role and responsibility of the Congress in the warmaking and peace settlement determinations of our Government and the effect of this resolution will be to convert that feeling into the reality of participating action.

In our deliberations on this resolution, Madam Chairman, let us wisely and pointedly emphasize the truth of past and modern history, that no American military engagement can be successfully carried out without the full understanding and support of the great majority of the American people.

Madam Chairman, in substance all that this resolution asks is that the Congress, as the voice of the people, be consulted before any Chief Executive commitment of the Armed Forces of the United States to hostilities in another country.

Let us further remember that the understanding and support of our priority national goals, by the American people, is best inspired by their observation that the executive and legislative branches of the Government are working together and sharing responsibility with the utmost cooperation and good will.

Madam Chairman, in my deepest conviction the adoption of this resolution will effectively serve to help restore the confidence of our people in the National Government, at a time when such confidence is critically urgent and I, therefore, hope that this measure is overwhelmingly accepted by the House.

Mrs. HOLT. Madam Chairman, this bill purports to define Presidential authority and congressional responsibility for the commitment of U.S. troops in combat situations.

Though I fully support legislative efforts to define such authority and responsibility, I am casting my vote against this resolution because I maintain that it does not achieve its stated objectives.

This resolution would grant the President unlimited warmaking powers for a period of 120 days, at which time congressional approval would be required to sustain the troop commitment. The end result is that Congress, by passage of this resolution, is relegating itself to a passive role in the development and implementation of foreign policy. Congressional inaction, the unwillingness or inability to make a decision, under the terms of this resolution is all that is needed to halt U.S. involvement in a conflict situation.

It seems to me that the American people have a right to look to the elected representatives for leadership in areas of domestic and foreign policy. Elected officials have an obligation to accept this responsibility and provide such leadership. House Joint Resolution 542 is, in my opinion, an evasion of responsibility.

Mr. BROYHILL of Virginia. Madam Chairman, the War Powers Resolution of 1973 is unwise and possibly unconstitutional legislation, and I oppose it.

Our Founding Fathers knew exactly what they were doing when they granted Congress the power to declare war but not conduct war, and reserved the right to act as Commander in Chief of our Armed Forces to the President of the United States. As Commander in Chief he must be able to commit troops in any emergency, and unnecessary arbitrary procedures for doing so and restrictions on the time within which he must act serve only to handicap him in fulfilling his responsibilities with regard to the safety of our Nation's people.

This resolution is obviously directed at the unpopular conflict in Southeast Asia. Yet it comes not during the heat of the conflict, but at a time when it is virtually at an end. Had it been on the books 10 years ago, I am convinced it would not have changed the role of Congress in that conflict, or in its conclusion. It would have given us no powers we did not already possess nor would it have altered the course we took. With the situation as it was presented to Congress at the time of the Gulf of Tonkin Resolution, Congress would undoubtedly have voted the approval of the President's decisions, and might even have declared

war. That action would have had no effect on the struggle there, and a declaration of war would have made it even more difficult for the President to fulfill his commitment to get our troops out of South Vietnam.

One of the most dangerous effects passage of this resolution might have is the effect it will have on the President's ability to conduct our foreign policy. As some of our colleagues have noted, we have commitments to nations all over the globe for mutual defense. Tying the hands of the President to act quickly and decisively in emergencies will confuse both our friends and our enemies, and may well encourage our enemies to commit more acts of aggression. As we all know, many nations will act irrationally and unreasonably against another country if they feel they have an advantage. This resolution will, I believe, give them that advantage.

Proponents of this legislation acknowledge that the President as Commander in Chief has power under the Constitution to commit troops in times of crisis, yet they propose to deny him authority to commit them for more than 120 days. If he has the power, how can it be abrogated by the passage of a fixed time schedule? Why 120 days? Why not 30 days—or 200 days? If he has the constitutional right how can we say that right expires after 120 days simply because we do not affirm it by a vote in Congress?

It seems both foolish and foolhardy to establish a procedure where Congress by inaction can force the President to withdraw American troops without regard to the dangers of a hasty retreat, in any emergency commitment he may have made. If the point is to allow 120 days to goad Congress into action it seems to me that the burden should be on us to decide whether we approve or disapprove the President's action. The language of this resolution envisages a change of national policy if the will of Congress is not expressed at all. By taking no position either for or against the President's action we change national policy.

We have heard a lot of talk about the need for Congress to reassert its control and take away some of the powers of the White House. There is one area, though, where there is no question about our authority, and that is in appropriations, in the budgetmaking. But here we are 18 days into the new fiscal 1974, and we have yet to come up with an alternative to the budget the President proposed back in January. We have had the recommendations of the Joint Study Committee on Budget Control before the House Rules Committee since April, but in the meantime we are still in the old business of passing individual appropriation bills without knowing what they add up to, and in some cases running the Government on continuing resolutions because we cannot get a handle on controlling Government spending.

I feel strongly that in a matter as important as the lives of American servicemen it is imperative that Congress stand up and be counted either for or against the commitment of troops. I therefore intend to support the amendments which require such action of Congress and to oppose this resolution on final passage should the amendments fail.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mrs. GRIFFITHS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President, pursuant to House Resolution 456, she reported the joint resolution back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the joint resolution.

Mr. GERALD R. FORD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 244, nays 170, not voting 19, as follows:

[Roll No. 352]

YEAS—244

Adams	Daniel, Dan	Hastings
Addabbo	Daniels, Dominick V.	Hays
Alexander	Davis, Ga.	Heckler, Mass.
Anderson, Calif.	de la Garza	Heinz
Anderson, Ill.	Delaney	Helstoski
Andrews, N.C.	Dellenback	Henderson
Andrews, N. Dak.	Dent	Hicks
Annunzio	Diggs	Hillis
Armstrong	Dingell	Holifield
Ashbrook	Donohue	Horton
Ashley	Dulski	Howard
Aspin	du Pont	Ichord
Badillo	Edwards, Ala.	Johnson, Calif.
Barrett	Edwards, Calif.	Johnson, Colo.
Bell	Eilberg	Jones, Ala.
Bergland	Erlenborn	Jones, N.C.
Bevill	Esch	Jones, Okla.
Biaggi	Evans, Colo.	Jordan
Biester	Evins, Tenn.	Karth
Bingham	Fascell	Kastenmeier
Boland	Findley	Kazen
Bowen	Fish	Kluczynski
Brademas	Flood	Koch
Brasco	Flowers	Kyros
Brooks	Foley	Leggett
Broomfield	Forsythe	Lehman
Brotzman	Fountain	Litton
Brown, Calif.	Fraser	Long, Md.
Broyhill, N.C.	Frenzel	McClory
Burke, Mass.	Frey	McCormack
Burlison, Mo.	Froehlich	McDade
Burton	Fulton	McFall
Byron	Fuqua	McKay
Carey, N.Y.	Gaydos	McKinney
Carney, Ohio	Giaimo	McSpadden
Carter	Gibbons	Macdonald
Chamberlain	Gilman	Madden
Chappell	Gonzalez	Mahon
Chisholm	Grasso	Mann
Clark	Gray	Martin, N.C.
Clausen, Don H.	Green, Oreg.	Mathias, Calif.
Cleveland	Griffiths	Mathis, Ga.
Cochran	Gubser	Matsunaga
Cohen	Gude	Mayne
Conlan	Guyer	Mazzoli
Conte	Hamilton	Meeds
Corman	Hanley	Melcher
Cotter	Hanna	Metcalfe
Coughlin	Hanrahan	Minish
Cronin	Hansen, Wash.	Mitchell, Md.
	Harrington	Moakley
	Harvey	Mollohan
		Montgomery
Moorhead, Pa.	Rogers	Taylor, N.C.
Morgan	Roncalio, Wyo.	Teague, Calif.
Mosher	Rooney, Pa.	Thompson, N.J.
Murphy, Ill.	Rose	Thone
Murphy, N.Y.	Rosenthal	Tiernan
Nichols	Rostenkowski	Udall
Nix	Roush	Ullman
Obey	Roy	Van Deerlin
O'Hara	Roybal	Vander Jagt
O'Neill	Runnels	Vanik
Patten	Ruppe	Veysey
Pepper	Ryan	Vigorito
Pettis	St Germain	Waldie
Peyser	Sarasin	Whalen
Pickle	Sarbanes	White
Pike	Seiberling	Wilson, Charles H., Calif.
Poage	Shipley	Wilson, Charles, Tex
Podell	Sisk	Winn
Preyer	Slack	Wolff
Price, Ill.	Smith, N.Y.	Wright
Quie	Snyder	Wyatt
Railsback	Staggers	Wyman
Randall	Stanton, J. William	Yates
Rees	Stanton, James V.	Yatron
Regula	Steele	Young, Ga.
Reid	Steiger, Wis.	Young, Ill.
Reuss	Stephens	Zablocki
Riegle	Studds	
Rinaldo	Sullivan	
Robison, N.Y.	Symington	
Rodino		
Roe		

NAYS—170

Abdnor	Ginn	O'Brien
Abzug	Goldwater	Owens
Archer	Goodling	Parris
Arends	Green, Pa.	Passman
Bafalis	Grover	Perkins
Baker	Gunter	Powell, Ohio
Beard	Haley	Price, Tex.
Bennett	Hammer-schmidt	Quillen
Blackburn	Hansen, Idaho	Rangel
Boggs	Harsha	Rarick
Bolling	Hébert	Rhodes
Bray	Hechler, W. Va.	Roberts
Breaux	Hinshaw	Robinson, Va.
Breckinridge	Hogan	Roncallo, N.Y.
Brinkley	Holt	Rousselot
Brown, Mich.	Holtzman	Ruth
Brown, Ohio	Hosmer	Satterfield
Broyhill, Va.	Huber	Scherle
Buchanan	Hudnut	Schneebeli
Burgener	Hungate	Schroeder
Burke, Calif.	Hunt	Sebelius
Burke, Fla.	Hutchinson	Shoup
Burleson, Tex.	Jarman	Shriver
Butler	Johnson, Pa.	Shuster
Camp	Jones, Tenn.	Sikes
Casey, Tex.	Keating	Skubitz
Cederberg	Ketchum	Smith, Iowa
Clancy	Kuykendall	Spence
Clawson, Del	Landrum	Stark
Clay	Latta	Steed
Collier	Lent	Steiger, Ariz.
Collins, Ill.	Long, La.	Stokes
Collins, Tex.	Lott	Stratton
Conable	Lujan	Stubblefield
Conyers	McCloskey	Stuckey
Crane	McCollister	Symms
Culver	McEwen	Taylor, Mo.
Daniel, Robert W., Jr.	Madigan	Thomson, Wis.
Davis, S.C.	Mailliard	Thornton
Davis, Wis.	Mallary	Towell, Nev.
Dellums	Maraziti	Treen
Denholm	Martin, Nebr.	Waggonner
Dennis	Mezvinsky	Walsh
Derwinski	Michel	Wampler
Devine	Milford	Ware
Dickinson	Miller	Whitehurst
Dorn	Mink	Whitten
Drinan	Minshall, Ohio	Widnall
Duncan	Mitchell, N.Y.	Wiggins
Eckhardt	Mizell	Williams
Eshleman	Moorhead, Calif.	Wilson, Bob
Flynt	Moss	Wydler
Ford, Gerald R.	Myers	Wylie
Ford, William D.	Natcher	Young, Alaska
Frelinghuysen	Nedzi	Young, Fla.
Gettys	Nelsen	Young, S.C.
		Young, Tex.
		Zion

NOT VOTING—19

Blatnik	King	Saylor
Danielson	Landgrebe	Steelman
Downing	Mills, Ark.	Talcott
Fisher	Patman	Teague, Tex.
Gross	Pritchard	Zwach
Hawkins	Rooney, N.Y.	
Kemp	Sandman	

So the joint resolution was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Rooney of New York for, with Mr. Saylor against.
Mr. Hawkins for, with Mr. Fisher against.
Mr. Pritchard for, with Mr. King against.
Mr. Sandman for, with Mr. Kemp against.
Mr. Steelman for, with Mr. Talcott against.

Until further notice:

Mr. Blatnik with Mr. Landgrebe.
Mr. Downing with Mr. Zwach.
Mr. Danielson with Mr. Teague of Texas.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION TO MAKE CORRECTIONS IN THE ENGROSSMENT OF HOUSE JOINT RESOLUTION 542

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that in the engrossment of House Joint Resolution 542 the Clerk be authorized to make corrections in punctuation, section numbers and cross references to reflect the actions taken by the House.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just passed.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

PERMISSION FOR COMMITTEE ON ARMED SERVICES TO FILE A REPORT ON H.R. 9286

Mr. STRATTON. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services may have until midnight tonight to file a report on H.R. 9286, the Armed Forces authorization bill for fiscal year 1974.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

EDITORIAL BY GEORGE W. IRELAND FOR THE GENERAL AVIATION OPERATORS COUNCIL

(Mr. MILFORD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. MILFORD. Mr. Speaker, Mr. George W. Ireland recently retired from the Federal Aviation Administration, after 33 years of service, to general aviation. For the last several years he has served as division chief in Fort Worth. I would like to share with you and my colleaues an editorial written by Mr. Ireland for the General Aviation Operators Council. I believe Mr. Ireland's insights into problems currently being experienced by the general aviation industry and his recommendations for some sort of a viable solution are excellent and merit every just assessment and consideration. I insert this editorial in the RECORD:

EDITORIAL BY GEORGE W. IRELAND

A recent DOT Cost Allocation Study has recommended very extreme taxes and fees for all general aviation users as the general aviation share in paying for the costs of the federal aviation system. But what about the monies now building up in the Airways Users Act Taxes? These monies by law can *only* be used for costs of facilities, (towers, centers, ILS, radars, airports and improvements) but the *operating* funds of the FAA must still be appropriated thru Congress. Operating funds include salaries and associated costs for training, travel, etc., so therefore the recommendation for additional taxes and fees to cover such costs.

Few will deny the need for airports, their improvement, and for many of the additional airways facilities. These additional facilities, of course, require additional people to operate and maintain.

The real problem is the tendency of large government organizations to generate and develop systems that promote and perpetuate themselves. And in FAA this is always under the guise of greater safety. Even though, in my opinion, the FAA is a most effective, efficient and service oriented government agency, it too is guilty of such conduct.

Are you aware, for instance, that the Air Traffic personnel salary classification grades and *numbers* of people are generally based on the numbers of operations and radio contacts for VFR and IFR flights. In the last several months a new program called STAGE III has been introduced to Towers for VFR operations. Basically it establishes the same control for entering and departing control airports in VFR as when IFR. It was proposed and adopted to improve safety and is *supposed* to be optional. However, to the pilot operating into and out of such control airports VFR it is a directed control with little option unless the pilot openly refuses to go to Approach or Departure control when requested by the Tower or Ground control. A three mile separation is required, therefore long unnecessary delays to aircraft operating in VFR conditions.

As a result of this Stage III program many control tower facilities such as Little Rock, Ark., Tulsa, Okla., and El Paso, Tex. have been reclassified so all personnel in the facility are promoted one grade resulting in approximately a $3,000.00 per year salary increase per person. The additional radio contact counts also leads to additional personnel. Are you aware that a minimum journeyman grade controllers salary at those locations is GS–12 $16,682 with tops to $21,686. A GS–13 controller $19,700 to $25,613. Each Supervisor or Specialist GS–14 $23,088 to $30,018. The Chief of these newly upgraded facilities is GS–15 at $26,898 to $34,971. The same upgrading is occurring on a national scale. It should be interesting to note that even during the recent government salary freezes these upgradings were exempted for controllers.

Now perhaps you can understand the incentive and motivation to give more and more control but the question is, at whose expense?

There is no question but that most Air Traffic personnel are very dedicated, concerned and competent. But the bureaucratic system of classification generated too many systems and programs that are promoted as safety and service, but when thoroughly analyzed are more self-serving than beneficial to industry. It should also be pointed out that the unionization in Federal agencies and particularly the Air Traffic Service has had marked effect on much that will affect your costs.

Formerly, before the massive build-up in FAA several years ago, the system was truly to serve the safety and needs of the pilot, but now with the growth, the complexities and the predominance of non-pilot controllers, the system has seemed to change to where the pilot must serve, the needs of the controller and the system. What a price to pay for progress or as the saying goes—"the tail is now wagging the dog."

So the point was well made by John Tucker, MidCoast Aviation, St. Louis in his article on "The Splintered Industry" that time is fast running out for all of General Aviation organizations representing all the industry, ie: Fixed base operators, manufacturers, air taxis, executives, business pilots, industrial operators, maintenance facilities, owners and just plain pilots and mechanics to join in a common goal to monitor each act or proposal within the FAA and speak out in *unison* on those that have questionable value to General Aviation.

The need would seem urgent to form a General Aviation Committee consisting of representatives of the various "splintered" organizations to be concerned with monitoring not only the regulatory activities but also internal program and system proposed changes by FAA. Many of the internal policies have a greater impact on the cost of operating than the regulatory changes.

A very important consideration for relief would be to seek a congressional change in the Airway User Tax Act to allow these funds to also pay for the operating costs directly associated with the operating and maintenance of the airways facilities and airports.

Whatever must be done the choice seems clear for General Aviation:

Continue to be "Splintered" to financial disaster or "Unification" to a financially sound industry.

PAR VALUE MODIFICATION ACT, EXTENSION OF REGULATION Q, AND EXTENSION OF FHA INSURANCE AUTHORITY

(Mr. FRENZEL asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. FRENZEL. Mr. Speaker, on May 31, H.R. 6912, the Par Value Modification Act, went into conference. After two meetings the conference seems to have dissolved, and the other body apparently has no interest in further meetings.

On May 23, H.R. 6370, the extension of Regulation Q, went into conference. At this point, meetings are not being held and the other body seems not to care about this bill, either.

Shortly before the close of the fiscal year, the House passed the extension of the FHA insurance authority. The other body has taken no action, and apparently does not care that the FHA is not able to issue insurance commitments.

These three citations are stunning examples of the other body's disregard for the welfare of this country. Each of these bills is a priority matter. Yet the other body has allowed the devaluation bill, which was accepted by the rest of the world in February, to lie on the shelf; it has allowed Regulation Q, a necessary control feature for our country's financial system, to expire; worst of all it has allowed the FHA insurance authority to