The original documents are located in Box 65, folder “War Powers Resolution Legislative History (1)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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

CONFERENCE REPORT

[To accompany H.J. Res. 542]

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

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

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

SHORT TITLE

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

PURPOSE AND POLICY

"Sec. 8. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and ensure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

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

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a decla-
[Document content here]
Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by yeas and nays.

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

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

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

Interpretation of Joint Resolution

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

Clement J. Zablocki, Thomas E. Morgan, Wayne L. Hays, Donald Frazier, Dante B. Fascell, Paul Finkiel, Wm. Broomfield,
Managers on the Part of the House.

J. W. Fulbright, Mike Mansfield, Stuart Symington, Edmund S. Muskie, G. Aiken, Clifford P. Case, J. K. Javits,
Managers on the Part of the Senate

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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

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

SHORT TITLE

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

PURPOSE AND POLICY

The Senate amendment contained a section entitled "Purpose and Policy" (section 2) and a section entitled "Emergency Use of the Armed Forces" (section 3) which defined the emergency powers of the President to introduce United States Armed Forces into hostilities or situations of imminent hostilities. The House joint resolution did not contain similar provisions.

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

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

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

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

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

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

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

Both the House joint resolution and the Senate amendment provided for termination within a specified time of presidential use of United States Armed Forces without a declaration of war or specific prior statutory authorization. The termination period in the House joint resolution was 120 days; in the Senate amendment, 90 days.

In section 5(a) the conferees accepted the provisions of the House joint resolution relating to the transmittal of the presidential report to Congress, with amendments which (1) provide for the possibility of reconvening of Congress in case of adjournment in order to consider such report; and (2) provide that 90 percent of the membership of the respective Houses may petition for such reconvening.

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

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

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

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

The House joint resolution provided a mechanism to ensure that the time period provided for under section 4 of the joint resolution would not expire while Congress was in adjournment. The Senate amendment had no similar provision. The conference report does not contain the House provision on the grounds that the language
of section 5 of the conference report had obviated the need of this section.

INTERPRETATION OF JOINT RESOLUTION

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

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

2. Elimination of House language concerning the constitutional process requirement contained in mutual security treaties; and

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

SEPARABILITY CLAUSE

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

EFFECTIVE DATE

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

Clement J. Zablocki, Thomas E. Morgan, Wayne L. Hays, Donald Fraser, Danve E. Fasell, Paul Fossett, Wm. Brownfield, Managers on the Part of the House.

J. W. Fulbright, Mike Mansfield, Stuart Symington, Edmund S. Muskie, G. Aiken, Clifford P. Case, J. K. Javits, Managers on the Part of the Senate.
WAR POWERS RESOLUTION OF 1973

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

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

REPORT
TOGETHER WITH MINORITY AND SUPPLEMENTAL VIEWS
[To accompany H.J. Res. 542]

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

The amendments are as follows:

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

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

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

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

TERMINATION OF CONGRESS

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

(1)
The Cambodian incursion of May 1970 provided the initial impetus for a number of bills and resolutions on the war powers. Many Members of Congress, including those who supported the action, were disturbed by the lack of prior consultation with Congress and the Press.
The near crisis in relations between the executive and legislative branches which the incident occasioned.

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

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

1. The Congress shall have power * * *
   * * * * *
   * * * * *
   * * * * *
   11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
   12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years;
   13. To provide and maintain a Navy;
   14. To make rules for the government and regulation of the land and naval forces;
   15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
   16. To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States;
   17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the Government of the United States, or in any department or officer thereof.

The war powers of the President are expressed in article II, section 9:

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

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

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

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

The Intent and Effect of House Joint Resolution 542

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

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

1. Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of United States Armed Forces to hostilities or situations where hostilities may be imminent.
2. Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, or places or substantially increases U.S. combat forces on foreign territory.
3. Provides for a specific procedure of consideration by Congress when a Presidential report is submitted.
4. Denies to the President the authority to commit U.S. Armed Forces for more than 90 days without specific congressional approval, while also allowing the Congress to order the President to disengage from combat operations at any time before the 90-day period ends through passage of a concurrent resolution.
5. Stipulates a specific congressional priority procedure for consideration of any relevant bill or resolution which may be introduced—in other words, an antifilibuster provision; and
6. Specifies that the measure is in no way intended to alter the constitutional authority of the Congress or the President, or the provisions of existing treaties.
Pursuant to clause 7, Rule XIII, of the House Rules, the committee believes that the adoption and implementation of this war powers resolution will result in little or no additional cost to the Government of the United States. If adopted, however, application of the legislation could result in substantial future savings to the Nation, both in blood and treasure, by preventing U.S. military combat involvements abroad which are found by Congress to be not in the national interest.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and introductory clause

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

The word "concerning" was chosen because the resolution is merely intended to elaborate upon the application of the war-making powers of the Congress and the President mentioned in the Constitution. By contrast with other war powers proposals, House Joint Resolution 592 does not attempt any itemized definition of the war powers.

Section 2. Consultation

This section directs that the President "in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostile or to situations where hostilities may be imminent."

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

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

The second element of section 2 relates to situations after a commitment of forces has been made (with or without prior consultation). In that instance, it imposes upon the President, through use of the word "shall," the obligation to "consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities are imminent."

A considerable amount of attention was given to the definition of consultation. Rejected, were: synonyms such as merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

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

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

Section 3. Reporting

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

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

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

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

(2) "Reporting is required when the President "commits United States Armed Forces equipped for combat to the territory, airspace or waters of a foreign nation, except for deployments which relate solely to supply, replacement, repair or training of United States Armed Forces." While subsection (1) refers to the commitment of U.S. troops to an area where armed conflict actually is in progress, subsection (2) covers the initial commitment of troops in situations in which there is no actual fighting but some
risk, however small, of the forces being involved in hostilities. A report would be required any time combat military forces were sent to another nation to alter or preserve the existing political status quo or to make the U.S. presence felt. Thus, for example, the dispatch of Marines to Thailand in 1962 and the quarantine of Cuba in the same year would have required Presidential reports. Reports would not be required for routine port supply calls, emergency aid measures, normal training exercises, and other noncombat military activities.

(3) Reporting is required when the President "substantially enlarges United States armed forces equipped for combat already located in a foreign nation." While the word "substantially" designates a flexible criterion, it is possible to arrive at a common-sense understanding of the numbers involved. A 100 percent increase in numbers of Marine guards at an embassy—say from 5 to 10—clearly would not be an occasion for a report. A thousand additional men sent to Europe under present circumstances does not significantly enlarge the total U.S. troop strength of about 200,000 already there. However, the dispatch of 1,000 men to Guantanamo Bay, Cuba, which now has a complement of 4,000 would mean an increase of 25 percent, which is substantial. Under this circumstance, President Kennedy would have been required to report to Congress in 1962 when he raised the number of U.S. military advisers in Vietnam from 700 to 16,000.

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

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

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

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

(A) the circumstances necessitating his action;
(B) the constitutional and legislative provisions under the authority of which he took such action;
(C) the estimated costs of such commitment or such enlargement of forces;
(D) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States armed forces abroad.

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

Section 4. Congressional action.

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

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

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

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

The language "shall jointly request" makes clear that both the Speaker and President pro tempore would have to concur in the desirability of asking the President to reconvene Congress.

Yet, through use of the word "shall" the committee intended to convey its strong belief that reports dealing with situations of urgency and importance would obligate these two officials to request the President to reconvene Congress. In this connection the committee recognizes that the Constitution states clearly that only the President "may" reconvene Congress.

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

The resolution further stipulates that following receipt of the report the Speaker and President pro tempore shall refer it to the Committee on Foreign Affairs of the House of Representatives and to the Senate Foreign Relations Committee. **4** The purpose of this language was to make clear that these two committees have proper jurisdiction over declarations of war and with foreign affairs generally. Further, in order to make the report available to all members of Congress the resolution stipulates that it "be printed as a document for each House."

H. Rep. 297, 93-2—2
Subsection (b) of the resolution is one of its major provisions. In brief, it stipulates that “within one hundred and twenty calendar days after a report is submitted or is required to be submitted” the President would be required to terminate the commitment referred to in the report and “remove any enlargement of U.S. Armed Forces” unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces. Considerations which entered into this provision are as follows:

The language within one hundred and twenty calendar days was used as a means of providing an adequate but fixed limitation on the period of the Presidential action. The Congress recognizes that the President has, from time to time, assumed a power to act from provision of treaties, laws, and resolutions as well as from the Constitution itself which do not constitute an explicit or specific authorization. This provision enables Congress to consider the necessity or wisdom of a President’s action and to require the President to abandon such action if Congress is not persuaded that the action is in the interest of the United States, or to endorse the action if Congress believes it to be in the national interest. As is made clear in section 6 of the resolution, this provision is not to be construed as a grant of authority to the President to act for 120 days. Rather, it should be considered a specific time limitation upon any power to act assumed by the President from sources other than a specific authorization by Congress.

Nor should this limitation and the power contained in subsection (c) be interpreted as limiting the means now available to Congress and citizens to challenge the authority of the President to act. The language within one hundred and twenty calendar days or is required to be submitted takes into account a situation in which the President for whatever reason may decide not to submit a report. In that case, the 120-day period would begin after the 72-hour period referred to in section 3.

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

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

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

The phrase shall be disregarded has as its antecedent the President’s action of committing U.S. Armed Forces. The intent of the committee was simply that the President shall stop the action to which he has committed the forces by releasing the forces from the order which committed them, and removing them from the situation.

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

Sections 6 and 8: Congressional priority procedure

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

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

Timing of Section 5

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

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

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

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

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

Within 3 legislative days of being reported by committee in other body.—Legislation so reported shall become pending buil-
ness and shall be voted on unless such body shall otherwise determine by yeas and nays.  
End of 120-day period.—Presidential action must stop unless previously sanctioned by Congress.

TIMING OF SECTION 6

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

Within 12 calendar days of introduction of concurrent resolution.—One such resolution shall be reported out by committee with recommendations and shall become pending business.

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

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

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

Section 7: Termination of Congress

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

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

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

Section 8: Interpretation of act

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

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

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

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

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

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

Section 9: Applicability to certain existing commitments

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

Section 10: Effective date

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

USE OF A CONCURRENT RESOLUTION

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

There are many examples of legislative actions which have the effect of law without a Presidential signature. Perhaps the most notable is the ability of Congress to veto executive branch reorganization plans under the Executive Reorganization Act. Other examples are amendments to the Constitution of the United States and orders to spend money appropriated to the use of the Congress. Further, most of the important legislation enacted for the prosecution of World War II provided that the powers granted to the President would come to an end upon adoption of concurrent resolutions to that purpose. Among those acts were:

The Lend-Lease Act;
First War Powers Act;
Emergency Price Control Act;
Stabilization Act of 1942;
War Labor Disputes Act.
In more recent times both the Middle East Resolution and the Gulf of Tonkin Resolution provided for their repeal by concurrent resolution. This use of a concurrent resolution has been accepted by various authorities as a constitutionally valid practice. It might be noted that Senator Sam J. Ervin, a noted constitutional scholar, has authored a bill which would permit international executive agreements to be “vetoed” by the Congress through passage of a concurrent resolution. This proposal has been endorsed by many constitutional experts and a former Supreme Court justice.

The constitutional validity of such usage of a concurrent resolution is based on the capacity of Congress to limit or to terminate the authority it delegates to the Executive. In the case of the war powers, the Constitution is clear that the power to declare war, as well as the power to raise and maintain an army and a navy, belong to Congress. Under the Constitution, the President is designated as the Commander in Chief to prosecute wars authorized by Congress. When the President commits U.S. Armed Forces to hostilities abroad on his own responsibility, he has, in effect, assumed congressional authority. Under this war powers resolution the Congress can rescind that authority as it sees fit by a concurrent resolution and thereby avoid the problem of a Presidential veto. The authority for the Congress to establish a legislative process for rescinding an assumed power to act on the part of the President can be found in Article I, Section 8, of the Constitution through the “necessary and proper” clause.

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

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

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

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

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

We should also consider the constitutionality of section 4 (c), which would permit the Congress by a concurrent resolution to require the President to disengage U.S. Armed Forces from hostilities. We have no problem with the policy envisioned in section 4 (c); namely that in exercising a shared constitutional power a majority of both Houses
of Congress should have the power to require the disengagement of
Armed Forces committed to hostilities by the President without con­
gressional approval.
We would, however, call attention to the constitutional question of
whether a concurrent resolution, not requiring the approval of the
President, would be binding upon the President.

WILLIAM S. MAHILLAR,
WILLIAM S. BROMFIELD,
ROBERT B. (Bob) MATHIAS,
TENNYSON GUTER,
GUY VANDER JAGT.

We concur that there is great need for war powers legislation. Con­
gress must possess the means by which it can act on the question of
placing U.S. Armed Forces in combat. House Joint Resolution 542
goes a long way toward providing such a mechanism.
Nevertheless, the language in section 4(b) troubles us. It permits
the exercise of congressional will through inaction. It is our opinion
that in order to fulfill its constitutional responsibility, Congress must
act, whether it be in a positive or negative manner.
Therefore, during the committee's markup of the resolution, we
supported replacing the committee's language in section 4(b) with an
amendment similar to the following:

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

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

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

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

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

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

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

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

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

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

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

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

Proposers may argue that in such a situation Congress would recognize the necessity of declaring war, or of specifically authorizing the use of troops. As a practical matter, however, Congress does not
always move quickly and a legislative deadlock might develop. Moreover, in our opinion it is highly undesirable for Congress, through its own inaction, to be able to determine whether a course of Presidential action should be continued.

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

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

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

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

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

The proper and most useful role for Congress to play, in decisions of war and peace, cannot be developed through confrontation with the Executive. To function effectively, particularly in times of national crisis, our system of government must exhibit a maximum amount of cooperation between the two branches—executive and legislative. In the past such cooperation has been the means by which we have achieved successful policy decisions. It is to this end that we should be striving. House Joint Resolution 548 will not help—indeed, we believe it will seriously impede—the achievement of this objective.

Peter H. B. Frelighusen, Edward J. Drewinski, Vernon W. Thomson, J. Herbert Burke.
THE WHITE HOUSE
WASHINGTON
May 14, 1975

MEMORANDUM FOR: Philip W. Buchen
FROM: Jay T. French

The paper clips mark those sections of the legislative history which deal with "consultations".
LEGISLATIVE HISTORY
P.L. 93-148

WAR POWERS RESOLUTION
P.L. 93-148, see page 644

Senate Report (Foreign Relations Committee) No. 93-220, June 14, 1973 [To accompany S. 440]
Cong. Record Vol. 119 (1973)

DATES OF CONSIDERATION AND PASSAGE
House July 18, October 12, 1973
Senate July 20, October 10, 1973

The House bill was passed in lieu of the Senate bill. The House Report and the House Conference Report are set out.

HOUSE REPORT NO. 93-287

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

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.

BACKGROUND

On three occasions in the past two sessions of Congress, the House of Representatives has passed war powers legislation. In the 91st Congress a joint resolution reported by unanimous vote from the Committee on Foreign Affairs was adopted under suspension of the rules in the House by a vote of 283 to 26. The House-passed measure was sent to the Senate where, because of that body's failure to act, it died with the end of the 91st Congress.

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

ACTION IN THE 93D CONGRESS

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

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

Concerning the war powers of the Congress and the President.
H.J. Res. 50—Slaughter
H.R. 2053—Natsunaga
H.R. 4378—Gurule
H.R. 5669—de Font

Governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
H.R. 517—Bingham
H.R. 6098—Nix
H.R. 6421—Bingham et al.

Relating to the power of Congress to declare war.
H.J. Res. 51—Leggett

Relating to the war powers of the Congress.
H.J. Res. 72—Dickinson
H.J. Res. 71—Chappell et al.
H.J. Res. 72—Chappell et al.
H.J. Res. 80—Matsumaga
H.J. Res. 500—Dickinson
H.J. Res. 471—Pouge
H.J. Res. 609—Chappell et al.
H.J. Res. 448—Cronin

Relative to the commitment of U.S. Armed Forces.
H. Res. 112—Rarick
To define the authority of the President of the United States to intervene abroad or to make war without the express consent of Congress.
H.R. 3722—Nix
H.R. 4934—Nix

To make rules respecting military hostilities in the absence of a declaration of war.
H.R. 595—Ques
H.R. 2615—Wallack
H.R. 3740—Tiernan

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
H.R. 454—Delehanty
H.R. 1459—Ullman
H.R. 3139—Harrington
H.R. 3205—Charles E. Wilson of Calif.
H.R. 3403—Fitch
H.R. 3823—Marrill
H.R. 4052—Perkins
H.R. 4355— Houpe
H.R. 4070—Meds
H.R. 5432—Zwach
H.R. 5894—Karch

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

H.R. 2942—Dennis et al.
H.R. 6318—Dennis et al.

Testifying were seven Members of the House, two Senators, a spokesman for the Department of State, and five private experts. Four markup sessions followed at which new language was drafted. A revised war powers resolution was ordered reported to the full committee by a vote of 9 to 1 on May 2. The following day the measure, House Joint Resolution 542, was introduced by the subcommittee chairman with 14 cosponsors, including Mr. Fountain, Mr. Fraser, Mr. Bing

CONSTITUTIONAL CONTEXT

The Cambodian incursion of May 1970 provided the initial impetus for a number of bills and resolutions on the war powers. Many Members of Congress, including those who supported the action, were disturbed by the lack of prior consultation with Congress and the near crisis in relations between the executive and legislative branches which the incident occasioned.

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

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

1. The Congress shall have power

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

13. To provide and maintain a Navy;

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

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

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

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

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

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

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

THE INTENT AND EFFECT OF HOUSE JOINT RESOLUTION 542

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

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

1. Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of United States Armed Forces to hostilities or situations where hostilities may be imminent;
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2. Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, or places or substantially increases U.S. combat forces on foreign territory.

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

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

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

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

COST ESTIMATE

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and introductory clause

The introductory clause simply reads: "Concerning the war powers of Congress and the President." Sec. 1, the "Short Title," reads: "This measure may be cited as the 'War Powers Resolution of 1973.'" The word "concerning" was chosen because the resolution is merely intended to elaborate upon the application of the warmaking powers of the Congress and the President mentioned in the Constitution. By contrast with other war powers proposals, House Joint Resolution 552 does not attempt any itemized definition of the war powers.

Section 2. Consultation

This section directs that the President "in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostilities or to situations where hostilities may be imminent." The use of the word "every" reflects the committee's belief that such consultation prior to the commitment of armed forces should be inclusive. In other words, it should apply in extraordinary and emergency circumstances—even when it is not possible to get formal congressional approval in the form of a declaration of war or other specific authorization.

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

The second element of section 2 relates to situations after a commitment of forces has been made (with or without prior consultation). In that instance, it imposes upon the President, through use of the word “shall,” the obligation to “consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities may be imminent.”

A considerable amount of attention was given to the definition of consultation. Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

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

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

Section 3. Reporting

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

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

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

The language makes clear that the subsection applies to hostilities outside the territory of the United States, as opposed to at-
This page contains text that appears to be a legislative history of a bill or resolution. The text discusses the need for the President to assemble all the pertinent information necessary to make a full report to the Congress. It includes discussions on the timing of reports, the form in which they should be submitted, and the procedures involved in submitting such reports on behalf of Congress.
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(3) Scope.—Five stipulations are made on the contents of the report. By prescriptive language in the resolution, the President is to include:

(A) the circumstances necessitating his action;
(B) the constitutional and legislative provisions under the authority of which he took such action;
(C) the estimated scope of activities;
(D) the estimated financial cost of such commitment or such enlargement of forces; and
(E) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

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

Section 4. Congressional action

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

Subsection (a) of section 4 provides that each report submitted by the President pursuant to section 3 shall be transmitted to the Speaker of the House and President pro tempore of the Senate on the same day. It further provides that if such a report is received when Congress is not in session, the Speaker and President pro tempore, if they deem it advisable, shall jointly request the President to convene Congress to provide for consideration of it and allow the Congress to take appropriate action pursuant to this section. There are three reasons for this language:

By use of the phrase "* * * if they deem it advisable * * *" it is intended that the good judgment of these two officials would determine whether the report covered a situation of sufficient urgency, importance and severity to warrant the extraordinary measure of ordering the reconvening of Congress. There may be instances when a report is filed on a relatively minor action. The language "* * * shall jointly request" makes clear that both the Speaker and President pro tempore would have to concur in the importance of and urgency of the situation covered in the report and in the desirability of asking the President to reconvene Congress. Yet, through use of the word "shall" the committee intended to convey its strong belief that reports dealing with situations of urgency and importance would obligate these two officials to request the President to reconvene Congress. In this connection the committee recognizes that the Constitution states clearly that only the President "may" reconvene Congress. The language "* * * take appropriate action * * *" refers to the congressional action and procedures
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outlined in section 4 (b) and (c) as well as sections 5 and 6, "Congressional Priority Procedure."
The resolution further stipulates that following receipt of the report the Speaker and President pro tempore shall refer "it to the Committee on Foreign Affairs of the House of Representatives and to the Senate Foreign Relations Committee." The purpose of this language was to make clear that these two committees have proper jurisdiction over declarations of war and with foreign affairs generally. Further, in order to make the report available to all members of Congress the resolution stipulates that it "be printed as a document for each House."
Subsection (b) of the resolution is one of its major provisions. In brief, it stipulates that "within one hundred and twenty calendar days after a report is submitted or is required to be submitted" the President would be required to terminate the commitment referred to in the report and "remove any enlargement of U.S. Armed Forces" unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces. Considerations which entered into this provision are as follows:
The language "within one hundred and twenty calendar days" was used as a means of providing an adequate but fixed limitation on the period of the Presidential action. The Congress recognizes that the President has, from time to time, assumed a power to act from provision of treaties, laws, and resolutions as well as from the Constitution itself which do not constitute an explicit or specific authorization. This provision enables Congress to consider the necessity or wisdom of a President's action and to require the President to abandon such action if Congress is not persuaded that the action is in the interest of the United States, or to endorse the action if Congress believes it to be in the national interest. As is made clear in section 8 of the resolution, this provision is not to be construed as a grant of authority to the President to act for 120 days. Rather, it should be considered a specific time limitation upon any power to act assumed by the President from sources other than a specific authorization by Congress.
Nor should this limitation and the power contained in subsection (c) be interpreted as limiting the means now available to Congress and citizens to challenge the authority of the President to act.
The language "or is required to be submitted" takes into account a situation in which the President for whatever reason may decide not to submit a report. In that case, the 120-day period would begin after the 72-hour period referred to in section 3.
The language "the President shall terminate any commitment" obligates the President explicitly to stop the commitment or enlargement and remove U.S. Armed Forces to which the report refers.
The phrase "unless the Congress enacts a declaration of war or a specific authorization for the use of United States Armed Forces" spells out either of the two specific affirmative actions which the Congress would have to take in order for the President to continue his action, namely, a declaration of war or a specific authorization in the form of a joint resolution.
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Subsection (c) is another of the resolution's major provisions. It provides for the termination of the President's action covered in the report through passage of a concurrent resolution by both Houses, before the end of the 120-day period referred to in section 4(b) and notwithstanding section 4(b). It is, in other words, an option of congressional action. Considerations which entered into the legislative language here are as follows:

The phrase "shall be disengaged" has as its antecedent the President's action of committing U.S. Armed Forces. The intent of the committee was simply that the President shall stop the action to which he has committed the forces by releasing the forces from the order which committed them, and removing them from the situation.

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

Sections 5 and 6, Congressional priority procedure
Sections 5 and 6 stipulate a specific congressional priority procedure for consideration of a relevant bill or joint resolution which may be introduced pursuant to section 4(b) or a concurrent resolution introduced pursuant to section 4(c). Sections 5 and 6 are, in other words, the "antifilibuster" provisions of the resolution. While it was recognized that filibusters are primarily a problem of the Senate, it was felt that these provisions would protect the interests of the House.

It would achieve that objective, for example, by allowing the House enough time to deal with any relevant bill or resolution sent by the Senate. Section 5 relates to section 4(b) and section 6 relates to section 4(c). In both cases, the language provides for referral to relevant bills or resolutions to the House Committee on Foreign Affairs and the Senate Foreign Relations Committee in accord with the traditional jurisdiction of those committees.

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

TIMING OF SECTION 5

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

Forty-five days before end of 180-day period.—Bill or joint resolution must be introduced to be guaranteed protection of committee consideration.

Thirty days before end of 180-day period.—One such resolution or bill must be reported out by committee.
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Within 3 legislative days of being reported by committee.—Legislation becomes pending business of either House and shall be voted on and sent to the other body.

Fifteen days before end of 180-day period.—Legislation acted upon by one body and sent to the other body and referred to appropriate committee shall be reported out.

Within 3 legislative days of being reported by committee in other body.—Legislation so reported shall become pending business and shall be voted on unless such body shall otherwise determine by yeas and nays.

End of 180-day period.—Presidential action must stop unless previously sanctioned by Congress.

TIMING OF SECTION 6

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

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

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

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

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

Section 7. Termination of Congress

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

The committee did not wish to force the President to cease a military action abroad simply because Congress was not in session at the expiration of 180 days and it had not been possible to take final action before adjournment.

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

Section 8. Interpretation of Act

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

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

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

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

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

Section 9. Applicability to certain existing commitments

This section provides that the resolution would apply to those commitments of U.S. Armed Forces to hostilities which are in progress on the date of its enactment into law. The section further provides that upon enactment of the resolution the President should proceed to file the report as required by section 5 and that the 120-day period called for by subsection 4(b) would begin on the date of the filing of the report.

Section 10. Effective date

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

USE OF A CONCURRENT RESOLUTION

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

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

Further, most of the important legislation enacted for the prosecution of World War II provided that the powers granted to the Pres-

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ident would come to an end upon adoption of concurrent resolutions to that purpose. Among those acts were:

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

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

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

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

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

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

**Supplemental Views of Representatives Manzillo, Bloomfield, Mathias, Guyer, and Vander Jagt**

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

It is our hope that as the House works its will, the Members will carefully scrutinize section 4(b) and (c). In our opinion, section 4(b) is dangerous and perhaps unconstitutional. It would unwisey put into law a provision whereby the failure of the Congress to act could force Presidential action with major national and international implications. Specifically, section 4(b) requires that within 120 calendar days.
If agrees to this, the President may terminate any commitment and remove any enlargement of U.S. Armed Forces with respect to which such report was submitted, unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces. In our opinion, the Congress ought to exercise its powers in a positive way and not have major consequences ensue from the inaction of the Congress.

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

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

We should also consider the constitutionality of section 4(c), which would require the President by a concurrent resolution to require the President to disengage U.S. Armed Forces from hostilities. We have no problem with the policy envisioned in section 4(c); namely that in exercising a shared constitutional power a majority of both Houses of Congress should have the power to require the disengagement of Armed Forces committed to hostilities by the President without congressional approval.

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

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

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

Supplemental Views of Representatives Buchanan and Whalen

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

Nevertheless, the language in section 4(b) troubles us. It permits the exercise of congressional will through inaction. It is our opinion that in order to fulfill its constitutional responsibility, Congress must act, whether it be in a positive or negative manner.
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Therefore, during the committee's markup of the resolution, we supported replacing the committee's language in section 4(b) with an amendment similar to the following:

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

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

JOHN BUCHANAN,
CHARLES W. WHALEN, JR.

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

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

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

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

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

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

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

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

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

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

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

Proponents may argue that in such a situation Congress would recognize the necessity of declaring war, or of specifically authorizing the use of troops. As a practical matter, however, Congress does not always move quickly and a legislative deadlock might develop. Moreover, in our opinion it is highly undesirable for Congress, through its own inaction, to be able to determine whether a course of Presidential action should be continued.

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

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

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

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

While sections 7 and 8 are generally helpful, given their context, we strongly oppose the requirement of section 9 that this resolution be applied retroactively to cover hostilities existing on the day of its enactment which were previously authorized and initiated.
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The proper and most useful role for Congress to play, in decisions of war and peace, cannot be developed through confrontation with the Executive. To function effectively, particularly in times of national crisis, our system of government must exhibit a maximum amount of cooperation between the two branches—executive and legislative. In the past such cooperation has been the means by which we have achieved successful policy decisions. It is to this end that we should be striving. House Joint Resolution 542 will not help—indeed, we believe it will seriously impede—the achievement of this objective.

PETER H. B. FERLINGHETTI,
EDWARD J. DERWINSKI,
VERNON V. THOMPSON,
J. HERBERT BURKE.

CONFERENCE REPORT NO. 93-547

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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

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

SHORT TITLE

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

PURPOSE AND POLICY

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

The House joint resolution did not contain similar provisions.

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

(a) the purpose of the joint resolution is to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will
June 25, 1973

PROPOSED AMENDMENT TO WAR POWERS RESOLUTION

Mr. DENNIS asked and was granted unanimous consent to address the House for 1 minute, and to revise and extend his remarks and include extraneous material.

Mr. DENNIS. Mr. Speaker and Members of the House: When we consider the war powers resolution, House Joint Resolution 439, on Wednesday afternoon under the 5-minute rule, I intend to offer an amendment, in the nature of a substitute, a war powers bill which I have drawn which will differ in several important respects from that resolution, notably in the fact that under my bill an affirmative vote on the part of the Congress would be necessary in order to require the President to terminate hostilities abroad rather than permitting the expiration of a time by inaction on our part which would bring such hostilities to a close.

Mr. Speaker, I insert in the Record at this point my proposed amendment: Acronyms Covered by Mr. Dennis or the Senate or the House of Representatives for the Peace or the Public Interest.

The Clerk read the title of the bill.

The Clerk read the statement.

Mr. MAHON. Mr. Speaker, unanimous consent that all Members have recorded their votes by electronic device, a quorum.

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

CONFERENCES ON REPORT ON 7457, SUPPLEMENTAL APPROPRIATIONS, 1973

Mr. MAHON, Mr. Speaker, I call the House to order and present the conference report on the bill (H.Rept. 92-7457) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes, in an unanimous consent that the members be read in lieu thereof.

The Clerk read the title of the bill.

There was no objection.

The Clerk read the statement.

Mr. MAHON. The Speaker, the gentleman from Texas is recognized for 30 minutes.

The Speaker. The gentleman from Texas is recognized for 30 minutes.

Mr. MAHON. Mr. Speaker, unanimous consent that all Members of the House may have a legislative vote which contains their reports in respect to a resolution in regard to a conference report on the supplemental appropriation bill and also on the amendments in disagreement that all Members may have a right to insert tables and extraneous material in connections with their reports.

The Speaker. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

Mr. MAHON. The Speaker, the gentleman from Texas is recognized for 30 minutes.

Mr. MAHON. Mr. Speaker, I am going to try to make a dramatic but what I am about to say is significant and important and it relates to a conference have done on this bill that all of us as Members of that group have done on appropriation bills, the House of July 1, 1973, the bill is about $3.3 billion as large of the $32 billion Labor bill which will be before us tomorrow, and I do not merit did and explanation.
CONGRESSIONAL RECORD — HOUSE

PERSO.NAL EXPLANATION

Mr. PEPE.R, Mr. Speaker, with re-gard to rollcall No. 374, I was de-layed in the trans-action of a personal busi-ness and did not return un-til after the vote was tak-en. If I had been pres-ent, I would have voted "aye."

Mr. PEPE.R, as rollcall No. 374, I was again delayed on official busi-ness and did not return until the vote was tak-en. If I had been present, I would have voted "no."

PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 542, WAR POWERS OF CONGRESS AND THE PRESIDENT

Mr. PEPE.R, at the direc-tion of the Committee on Rules, I call up the Joint Resolution 456 and ask for its immediate consideration. The Clerk read the resolution, as follows:

Resolved, That upon the adop-tion of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H. Res. 542) concerning the war powers of Congress and the President. After general debate, which shall be confined to the debate on the motion to recommit, the joint resolution shall be ordered to the Committee on Rules, with the recommendation that the same be reported to the House and that the House resolve itself into a Committee of the Whole House on the State of the Union for the consideration of the joint resolution, with a view to report the same with amendments, not later than three days after the same shall be referred to the Committee on Rules, unless Congress specifically authorizes such Committee to report to the Congress within 72 hours after the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Florida is recognized for 1 hour.

Mr. PEPE.R, Mr. Speaker, I yield 30 minutes to the able gentleman from Nebraska (Mr. MARTIN) and pending that I yield myself such time as I may consume.

Mr. PEPE.R. House Resolution 456 provides for an open rule and 3 hours of general debate on House Joint Resolution 542, the war powers resolution of 1973. The resolution directs the President to consult with the Congress before and during the commitment of U.S. forces to hostile situations.

This resolution requires the President to report to the Congress within 72 hours whenever, without specific congressional authorization, he commits U.S. forces to hostile situations, or places, or substantially increases U.S. forces on foreign soil. Section 4(c) provides that within 120 days after the report is submitted by the President, the Joint Resolution is to be considered and, if not passed, the Congress must authorize the commitment.

Some members are also seeking to order the President to disengage from combat operations at any time before the 120-day period ends through passage of a concurrent resolution. Generally a concurrent resolution does not require a signature by the President. I should like to analyze very quickly and briefly, Mr. Speaker, some of the provisions in this joint resolution.

One of these is as follows: "The estimated financial cost of each commitment or enlargement of forces." Mr. Speaker, it is virtually impossible for the President or any other individual to make an estimate as to the dollar cost of military activities in this area. This is just one of the weaknesses in this bill. If it were in order, I think the President must report in writing explaining his actions.

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The Committee on Foreign Affairs does not expect any new costs as a result of this enactment of the bill.

Mr. Speaker, the framers of the Constitution in their desire that the ultimate guaranteeing powers be in the hands of the people, have made the action of the Congress the only responsible provision. I commend the distinguished Committee on Foreign Affairs for bringing forth this resolution by the House.

I therefore urge the adoption of House Joint Resolution 456 in order that we may dis-cuss and debate the very important matter in the joint resolution and amendments thereto to final passage without intervention except one motion to recommit.

June 5, 1972

SPEAKER. The House is in order for the consideration of the joint resolution (H. Res. 542) concerning the war powers of Congress and the President.

The Clerk read the resolution, as follows:

Resolved, That upon the adop-tion of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H. Res. 542) concerning the war powers of Congress and the President. After general debate, which shall be confined to the debate on the motion to recommit, the joint resolution shall be ordered to the Committee on Rules, with the recommendation that the same be reported to the House and that the House resolve itself into a Committee of the Whole House on the State of the Union for the consideration of the joint resolution, with a view to report the same with amendments, not later than three days after the same shall be referred to the Committee on Rules, unless Congress specifically authorizes such Committee to report to the Congress within 72 hours after the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Florida is recognized for 1 hour.

Mr. PEPE.R, Mr. Speaker, I yield 30 minutes to the able gentleman from Nebraska (Mr. MARTIN) and pending that I yield myself such time as I may consume.

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The Commission on Rules, Mr. Speaker, has reported the hearings on the impoundment legislation. This legislation was authorized by the gentlemen from Texas (Mr. Mahon), the chairman of the Committee on Appropriations, Senator Ervin, one of the foremost authorities in Congress on the subject, testified before our committee.

The bill of the gentlemen from Texas (Mr. Mahon) has a similar provision in regard to a concurrent resolution concerning the impoundment of funds. I agree with the position that if the funds are impounded and the Congress acts within 60 days, with a concurrent resolution, the funds would immediately be released.

Mr. Speaker, I questioned Senator Ervin on this point. Let me read from the record what he had with Senator Ervin on the 21st day that he testified. This is Mr. Martin speaking.

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ment very seriously as to what power is delegated where. The war power rests deliberately with the President. The war power rests deliberately in that area and in that area only. The President is the one authorized to make the war, and the Congress, as a body, must be aware of that. When Presidents talk about the war power, they talk about the war power. They do not talk about the war power as if it were a power to which they could call on at any time. They talk about the war power in the context of setting certain conditions, and the President is the one who must attend to that. It is for that reason that we are here today, and that is why we can use a concurrent resolution, and the President can have a role in looking at that further when we get into the general war powers resolution. But I do feel that the gentleman from New Jersey (Mr. Proxmire) was right in saying that the war powers resolution—Mr. PINGORY—Gulf of Tonkin Resolution—I am sorry, the Gulf of Tonkin Resolution—which in fact was constitutional or not.

Mr. MARTIN of Nebraska. Mr. Speaker, I would hope that this debate would not be deferred until after the rule is adopted. At the present time, the President is committing American forces overseas, and I would like to see the President make a full report in writing to the Congress when forces are committed, and would provide procedures whereby the Congress could approve or disapprove of that action. Unlike the Zablocki bill, my bill would have early termination of the President's authority. I would like to see early termination of the President's authority to use troops without specific authority after 90 days instead of 120 days. If early termination of the President's authority could be achieved by enactment of a bill or joint resolution rather than by passage of a concurrent resolution, and would have established a Joint Congressional Security Act to commit with the President on decisions to commit the armed forces, it could use a concurrent resolution, and the Congress within 72 hours after the submission of the report, then the President must terminate all such activities.

Mr. Speaker, I am important that the House of Representatives accept the principle of war powers legislation. The House in its past, the Paris talks have come and gone, and we have heard Mr. Kissinger and others on the need for a new agreement that commits

I strongly urge the House to act favorably on the war powers resolution. The national interest requires Congress to share responsibility with the executive at the onset of all wars. We owe it to our friends and to the American people whom we serve.

Mr. ABBOGAT. Mr. Speaker, I join in appealing to my colleagues to follow up their historic vote of May 19 by approving today a total ban on the use of any funds to finance American bombing in Cambodia and Laos. When the House took its unprecedented action last month it was responding to the overwhelming desire of the American people to end once and for all U.S. military intervention in Indochina.

Our vote was limited to a denial of a request by the Department of Defense for "transfer authority" to use funds to pay for military assistance to Laos and Cambodia, but the significance of our action was to assert the national interest, and to put the nation's will to act decisively on the policy of massive terror bombings, as a result and the result of the Commitment not a change in our basic law.

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So, I rise in support of the rule.
No end to the bombing is in sight unless we act. Henry Kamm of the New York Times reports that there is "no likelihood that the Cambodian armed forces will reach a level of competence that will make the use of American air power less needed." About the only act of independent self-defense Lon Nol has reportedly been able to mount was the regime's recent arrest of australia's of the possibility that the bombing might be stopped. We have a choice today. We can vote to accept the Johnson amendment and thus end the intolerable suffering of the Cambodian people. Or we can stand pat any way. Yes, last month we voted to continue bombing, but only until the end of June, and after June the administration has our blessing to continue its unconstitutional, cruel, and wasteful bombing of a nation that in no way affects our security or represents any threat to our people or Government. We are voting today to prohibit the use of transfer funds for this kind of activity. How could we then turn around and permit the use of other funds for it?

I do not believe that we can welcome the debate and hope; for world peace represented by the Brezhnev visit and at the same time continue this policy of madness in Indochina.

We have, in this House by our vote, the power to save human lives. We have the power to save billions of dollars by stopping the bombing. We have the power—and the duty—to reassure our constitutional authority to make and unmakewar.

Let us choose to make peace.

Mr. MITCHELL of Maryland. Mr. Speaker, I rise today in support of House Joint Resolution 842, although, to be honest, there are parts of the bill which should be unnecessary, although unfortunately they are not. I want to refer to the constitutional and reporting clauses of the bill. It seems to me that it should have been the natural state of affairs for the executive branch, as it sought to concentrate more and more of the powers of troop commitment, hostility escalation and arms provision to its own domain to grant Congress the token part of period reports and occasional conferences.

However, the last few decades of Excutive activity in this area are surprisingly devoid of any consideration of the constitutionally invested authority of Congress to make the vital decisions of troop and material commitment to conflict areas. Therefore we find ourselves in the most embarrassing position of having to legislate two points which should have been a simplest products of courtesy and logic.

Moreover, I do not understand what possible objections there could be to the presentment that the President file a report within 72 hours, stating the nature and scope of a major action to be taken in the name of the American people. Certainly, the President has adequate staff to write such a report. We are assuming that he has sufficient evidence to submit. It is the need for the action or it should not be taken. As for the basic concept of accountability which is being broached by several of my colleagues, this is not even a question for discussion. It was decided several hundred years ago in the constitutional conventions which form our Government and which each branch of Government and every elected official of the Government is the only one that can be directly accountable to the people.

It is in the congressional action section of the bill when provided the most of the legislation and thus the greatest subject of controversy. The question here is not what type of war we want in the manipulation of this country's vital resources, the most vital of which is still her man, and woman, power, but if we want any war at all. The degree of our control is a matter which will be decided by the dictates of the individual situations. Whether or not we have any say at all, is a question to be solved by us here, this week, in the passage of a war powers resolution.

But to pass a war powers resolution without a meaningful congressional activity clause is, well, to simply go on passing—passing by your responsibility to the thousands of people whose multiple voices are combined in your one instance, some would argue that it took the thousands of you who may, each and every day, ask for a decision made in the White House, children the weighted responsibility to the Constitution which assumes, as that a Congress, you make a meaningful say in the foreign affairs of your country.

There are two objections voiced against the stipulation of a 120-day period during which time Congress may have its action and after which time action will be automatically halted unless otherwise stipulated by congressional resolution. These two objections are, basically, that while the President will in time of crisis, launch an unusually hostile attack, feeling "punished" by the 4-month limits. The other is that a peace settlement will be put off until the end of the 4-month period at which time Congress will lose whatever bargaining power it has. The reasons behind these two objections, generally well put forth by the same people, are mutually annulling. The first idea assumes the possibility of a phenomenally rapid escalation, the second, of an equally unlikely and non-negotiable desiccation. Now, in the wake of the President's revelations that our involvement in Vietnam has been such a simple product of courtesy and logic. The other is that a peace settlement will be put off until the end of the 4-month period at which time the United States will lose whatever bargaining power it had. The reasoning behind these two objections, generally well put forth by the same people, are mutually annulling. The first idea assumes the possibility of a phenomenally rapid escalation, the second, of an equally unlikely and non-negotiable desiccation. Now, in the wake of the President's revelations that our involvement in Vietnam has been such a simple product of courtesy and logic.

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WAR POWERS OF CONGRESS AND THE PRESIDENCE

Mr. ZABLOCKI. Mr. Speaker, I move that the House resolve itself into the Committees of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 543) to declare the war powers of Congress and the President.

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin (Mr. Zablocki).

The motion was agreed to.

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The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin (Mr. Zablocki).

The motion was agreed to.

We see no consensus on the war powers resolution.

Accordingly the House resolved itself into the Committees of the Whole House for the consideration of the joint resolution, House Joint Resolution 543, with Mrs. Corcoran in the chair.

The Clerk read the title of the joint resolution.

Mr. Speaker, I have no objection.

Mr. Speaker, I move the previous question on the joint resolution.

The previous question was ordered.

The resolution was agreed to.

The motion to reconsider was laid on the table.

GENERAL LEAVES

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to read and submit remarks on the pending resolution, House Joint Resolution 543.

The SPEAKER. Is there objection to the leave of the gentleman from Wisconsin?

There was no objection.

PRESIDENTIAL ACCOMPLISHMENTS

Mr. Speaker, this is an occasion of historic importance, of historic significance. It is an occasion in which the United States and the American people have been driven to the brink of war and then, finally, have resolved to seek a peaceful solution to the problem.

The President's decision to seek a peaceful solution was based on the belief that a peaceful solution was in the best interest of the United States and the world. It was based on the belief that a peaceful solution was in the best interest of the American people. It was based on the belief that a peaceful solution was in the best interest of the President.

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When we deal with the subject of war powers, we are in the area of shared powers of the Congress and of the President. It is almost impossible to draw a precise line where the power of the President begins and the power of the Congress ends, and vice versa.

However, I think that the committee and the gentleman have done a very, very important job in this respect. Even more important than defining our active powers in the act of setting up a mechanism whereby both the Congress and the President may exercise their shared powers.

I would like to ask the gentleman, and this is what concerns me about the wording of the legislation: Does the gentleman believe that the Gulf of Tonkin Gulf resolution would satisfy this requirement of a specific authorization for the use of U.S. Armed Forces?

Mr. ZABLOCKI. The direct reply to that question is "yes."

Mr. CHORD. The Tonkin Gulf resolution would satisfy, in the judgment of how I have felt about this legislation, section 4(b).

Mr. ZABLOCKI. I yield to the gentleman.

Mr. CHORD. (Mr. ZABLOCKI). It is the purpose of this legislation to bring us into the formation of policy. Therefore, we have provided for, in a section of the proposal for consultation to the extent possible. We have provided for the President to report to us. Specifically congressional actions will follow, thereby taking care of some of the concerns of many that the Congress may not act.

Therefore, the congressional process procedure was included in the legislation. Section 4(b) would require alternative congressional action within 10 days. I cannot imagine that at this time when the President commits troops a resolution would not be introduced by one Member of Congress in either body which would require either the affirmation, the approval of the President’s action, or a resolution disapproving.

Therefore, the very introduction of a resolution would trigger the legislative procedure by which the Congress would thereby be enlightened. House Joint Resolution 542 provides for affirmative action on the House floor.

Mr. ZABLOCKI. I understand the extreme difficulty of timing in a free Nation when we are involved in an undeclared war. The Congress has had certain objectives to protect the objectives of the U.S. Government. That is, we had so many acts on the foreign relations law to ensure that the Congress was silent too often. But this legislation is to bring the Congress into the formation of policy.

In short, I believe that the gentleman from Illinois, Mr. Chairperson, Mr. ZABLOCKI, has demonstrated a balanced and delicate solution and a solution that is born of careful deliberation. I believe House Joint Resolution 542 reflects that solution. As a consequence I believe House Joint Resolution 543 meets the test as demonstrated by the subcommittee’s vote of 5 to 1 and the full committee’s favorable vote of 31 to 4 with one Member voting "present."

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Madam Chairman, I urge the adoption of the war powers resolution without amendment.

Madam Chairman, in an effort to give every Member an opportunity to discuss this very intricate legislation, I will withhold a detailed explanation for only the subcommittee and the full committee to pursue the debate, and we shall sit on the committee attempt to try to reply to the intricate questions and the pointed questions that may be asked of us.

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

Mr. ZABLOCKI. I yield to the gentleman from Illinois.

Mr. FINDLEY. Madam Chairman, I have had the great pleasure of working closely with the gentleman from Wisconsin on the subject of war powers now for a period of 3 years, perhaps longer, and I have had a chance to witness firsthand the diligence with which he has approached the problem, his patience, his willingness to listen to all viewpoints, his determination to see it through, until we finally get a proper war powers bill on the statute books.

It has not been an easy task. I know that for the fact on two previous occasions, His His first initiative, as I have largely summarized, is that despite the fact that these two initiatives did not lead to a law, he nevertheless had the determination to bring us into a different approach. I certainly commend the gentleman.

I think his efforts will be considered in the light of history as a great contribution to the house efforts which many people have been involved in, to try to establish a proper relationship between the legislative branch and the President in this most vital of all fields of government action.

Mr. ZABLOCKI. Madam Chairman, I thank the gentleman from Illinois for his very generous and kind remarks. I would like to ask the gentleman from Wisconsin, in the spirit of the Tonkin Gulf, if you have done a very important job. I would like to ask the gentleman from Illinois, for your very generous and kind remarks. I would like to ask the gentleman from Wisconsin, in the spirit of the Tonkin Gulf, if you have done a very important job.

Mr. ZABLOCKI. Madam Chairman, as he has in the subcommittee and in which committees, I know when we discuss the legislation in detail, he will most adequately defend his position and that of the committee.

Madam Chairman, as he has in the subcommittee and in which committees, I know when we discuss the legislation in detail, he will most adequately defend his position and the position of the committee.

Mr. ZABLOCKI. Madam Chairman, with the gentleman’s yield?

Mr. ZABLOCKI. I yield to the gentleman from Missouri (Mr. McEwen).

Mr. CHIPORD. Madam Chairman, we are in no way intended to bypass or otherwise violate your proper jurisdiction. First and foremost, these two sections are intended as so-called antilitter provisions. Their purpose is to protect the interests of Congress.

Specifically that the measure is no way intended to alter the constitutional authority of the Congress or the President, or the provisions of existing treaties, and

Provides that the resolution would apply to those commitments which are in progress or as result of its enactment into law.

In conclusion, I am sure you, Madam Chairman, that House Joint Resolution 543 represents much serious thought, comprehensive review, and many hours of careful deliberation. In short, it fulfills our determined objective of providing a means whereby the President and the Congress can work together in order to coordinate our efforts, to move forward toward their ultimate, shared goal of maintaining the peace and security of the Nation.
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the part of many citizens both within and without the country which, in time of declared war, would have been treason. Never again do I want this Nation to become involved in another undeclared war.

We are still not solving the problem so as to how we protect the aims and objectives of the Government if we do not have a declared war.

Mr. ZABLOCKI. From the testimony we received during the hearings I believe it can be assumed that declared wars are probably something for the pages of history.

Therefore, this legislation is before us today, not only to allay our concern but also to bring about a

There are

Mr. ZABLOCKI. I would say so far as the Congress not declaring war, as an action to be

because the full power—and I do not agree with those who say it is shared power—to declare war resides in the Congress of the United States. I quote John Marshall:

The mere fact that the Congress does not declare war is itself an important step and determines such important policy, we should do it by an affirmative vote, not just by a 90 or 120 day drift by default, which then automatically ends the authority to conduct the hostility.

Mr. ZABLOCKI. May I say to the gentleman from Indiana very sincerely that we certainly appreciated the impact the gentleman made in this area of discussion when he testified before the sub-committee. Certainly we are fully cognizant of his interest and the legislation he has introduced, and we gave it full consideration.

Let me point out, however, where the gentleman's proposal does not, indeed, return the balance in the war powers area, as does the provision of section 4(b) that within 120 days Congress must act affirmatively.

Indeed, if it might not be able to pass any legislation, such a situation could. I might add, develop because, as in the gentleman's bill, if the Congress would pass legislation disapproving the President's commitment of troops and if it were a bill or a joint resolution the President could veto it. If the President would veto the bill it would take a two-thirds vote of Congress to override. Under the provisions of section 4(b) if the President vetoes and there is not sufficient strength to override, then a resolution of disapproval is not enacted and after 120 days the commitment of troops must cease. This could not happen under the gentleman's proposal.

As for the gentleman from Indiana's proposal, I further humbly submit that it gives the President more power than he has now. Indeed, the President in the gentleman's proposal could veto a congressional bill of disapproval. If we did not have a two-thirds majority the troops could remain.

We have given this matter some consideration. I want to bring in meaningful legislation we must close all these little loopholes in war powers legislation.

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

Mr. ZABLOCKI. I yield to the gentleman from New York.
Chairman. We have a heavy schedule for the entire week. This is important legislation. We must get every Member of the Congress to be here for the debate because we will have a further opportuni-
ty on Wednesday when we read the report out of committee under the 3-hour rule. We must finish the debate tonight and I hope we have no interruptions. I want to make the announcement that within 3 hours, we will hear everybody's views and try to answer the questions.

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

Mr. ZABLOCKI. I yield to the gentleman from Indiana for a question.

Mr. DENNIS. I am sure the gentleman has given my bill the utmost considera-
tion, there is no question about it in my mind, and I wish the gentleman had arrived at a different solution under my bill as the gentleman knows, if there has been a declaration of war or attack on this country the bill does not apply at all, and the bill further says that we will finish debate whatever the situation where he can do it at all, and I hope we will not have any interruptions.

Mr. ZABLOCKI. I yield to the gentleman from Indiana for a question.

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

Mr. ZABLOCKI. I yield to the gentleman from Indiana for a question.

Mr. FRELINGHUYSEN. Madam Chairman, I reserve the balance of my time.

Mr. ZABLOCKI. I yield myself such time as I may consume.

Madam Chairman, I am glad the House is considering this war powers resolution, but I do very much regret that a matter as important and precedent setting as this should be debated so late with so few Members to hear the debate.

But, Members of this body ought to have the opportunity to discuss this resolution, and this is one of the reasons I voted in the Foreign Affairs Committee to report the resolution, even though I have considerable misgivings about it.

Mr. ZABLOCKI. Madam Chairman, this resolution is, as I said, a double-barreled attempt to deal with the issue of war powers in a legislative manner.

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

Mr. ZABLOCKI. I yield to the gentleman from New Jersey (Mr. Fredlighet-
yussen).

Mr. FREDLIGTHUYSEN. Madam Chairman, I wonder if I misheard what the gentleman said. I understand the gentleman to say that a decision had been made in committee to take up the matter of an American determination to use troops. Did he describe that decision as, "We must close all of these loopholes?"

Is the gentleman suggesting that the President's authority to commit troops overseas is a "little loophole" that Congress must close? I wrote down what I thought I understood the gentleman to say. I can hardly believe my ears, if he is describing the situation that is presented to us by 4(b) as simply an attempt by his subcommittee to close "little loopholes" new available to our Chief Executive.

Mr. ZABLOCKI. Madam Chairman, that is not the interpretation at all. If we are going to recognize constitutional obligation and responsibility, and bring balance to the war-making powers area, it is necessary that we take such steps and enact such legislation where, in a veto will not negate the outcome in a majority of Congress is against the President's action, balance between the House. Within the 3 hours, we will hear everybody's views and try to answer the question.

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Madam Chairman, I am glad the House is considering this war powers resolution, but I do very much regret that a matter as important and precedent setting as this should be debated so late with so few Members to hear the debate.

But, Members of this body ought to have the opportunity to discuss this resolution, and this is one of the reasons I voted in the Foreign Affairs Committee to report the resolution, even though I have considerable misgivings about it.

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June 25, 1973

Senators and Members of the Senate, 

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

Mr. MAILLIARD. I yield to the gentleman from Illinois. 

Mr. SIKURITZ. On page 4 we are really asking the President to terminate any commitment and remove any armed forces from Vietnam. We are asking the President to terminate any armed forces from Vietnam. As the costs in men have increased, as the costs in casualties have increased, and as the costs in dollars have increased, we are asking that the President have the authority to terminate those commitments. And we are also asking that the President have the authority to terminate the congressional approval of those commitments. 

Mr. MAILLIARD. That is precisely what the Resolution does. 

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

Mr. MAILLIARD. I yield to the gentleman from Illinois. 

Mr. SIKURITZ. I thank the gentleman. 

Mr. SIKURITZ. I appreciate very much the gentleman mentioning the possibility of a perfecting amendment. I noticed the language in the Senate bill, and it is not necessary, I think it was necessary, that I am sure the gentleman is influenza in presenting this as a problem which has to be faced. 

As a courtesy to the Members of this body, I wonder if the gentleman would read the language in the Senate bill, and I felt that it was not necessary, that it was understood. Nevertheless, I am sure the gentleman is sincere in presenting this as a problem which has to be faced. 

Mr. MAILLIARD. I say to the gentleman that I may be able to do that before the debate is over. The Senate language does not apply directly to our joint resolution. It had to be rewritten, and I do not the text yet. 

Mr. SIKURITZ. Madam Chairman, I yield 8 minutes to the gentleman from North Carolina, Mr. Fountain. 

Mr. FOUNTAIN. Madam Chairman, the issue of war or peace has troubled mankind since the creation. 

Time and time again throughout history, that awesome question has confronted every nation. The way in which nations have answered that question has often determined their fate and affected the lives of millions of people—for better or for worse. 

Sometimes the answers brought forth turmoil and tears. Kingdoms were lost, empires crumbled, and democracies were subjugated by dictators. 

In other cases, the answers have resulted in democracy—in the American Revolution—and have brought about the death of an age—such as in World War II. 

Assumed in war, this question of war or peace is probably the most significant issue of our time. To reconcile any question of war or peace is extremely difficult to face up to. 

In the debate, surely the question is not to be answered by one man alone. Consequently, our debate today, establishing responsible guidelines relative to the war powers of the Presidency is a crucial one. The manner in which we act will have long-lasting effects on the future of democracy in our country. 

Our Founding Fathers very wisely divided up the government, defining and limiting the powers of each of the three branches, and distributing overall power as well, knowing that unlimited government is tyranny. 

The Congress, and only the Congress, was given the constitutional authority to declare war. But, as we have all observed down through many years this power has been dangerously eroded. 

So President, however sincere and dedicated, could ever be to have unlimited power to commit our Nation to a war without the express approval of the Nation through its duly elected, locally responsible representatives, in the Congress of the United States. 

America must use the sorrowful lessons learned on the mainland of Asia during the course of the past three decades. 

Congress never declared war, nor did it take other clear-cut affirmative action during the Korean police action. It never formally declared war during the Vietnam conflict, although the Gulf of Tonkin Resolution was looked upon by many as having produced that effect. 

As a result, confusion and uncertainty throughout the Nation has existed about the purpose and objectives of our military commitment. As the costs in men and treasure escalated, disparity and dissonance, confusion and frustration, and fears and doubts increased. 

Such a situation must just never be allowed to develop again. 

We must make every effort to prevent our Nation from ever again embarking into a full-scale war without the full moral sanction and support of the American people. 

In practical effect, this means that without further delay, we the elected representatives of the people of the United States must act. We must never let ourselves become involved in another war without appropriate affirmative action by the Congress. 

The question of war and peace is one of the most comprehensive and strongest of the powers of the President. 

We are proposing a bill that would require that any commitment of U.S. Armed Forces to military action must end after 120 days, if Congress has not acted affirmatively to endorse the President's action. 

We believe this section to be the key to effective war powers legislation. Perhaps the period for congressional action should be shorter or longer—30 days, 60 days, 90 days, or 120 days, as provided by this measure. On that, reasonable men may differ—and compromise. 

There can be no compromise, however, on the issue of affirmative action as provided in section 4(b). The people of the United States must at some point be permitted to have their voices heard through their elected representatives in the Congress. 

The purpose of the provision has suggested that we run the risk of requiring people to disengage from combat abroad simply as a result of congressional delay which would create a situation just must never be allowed to develop again. 

The resolution calls for prompt Presidential consultation with the Congress in any such situation. It provides for procedures for consultation by Congress, when U.S. forces are committed, and it requires a withdrawal of those forces if congressional approval is not forthcoming in 120 days. 

After all, it takes only one Member of either body—1 out of 535—to drop in such a bill or resolution of support for the President. 

Once that brief bill is introduced, the procedures which require congressional action would be set in motion, and a final vote would have to be taken in both Houses before the 120 day period ends. 

Under these circumstances, it is impossible to see Congress not acting at all. It must act and it will act. 

I, therefore, urge that this body reject any attempts to delete section 4(b)—a section which would destroy the heart of the resolution.
Madam Chairman, I have stood with others in opposing our engagement in Vietnam. When our forces were fighting there, once our honor had been committed, I believe we had to see the conflict through.

This was particularly important upon me during a study mission to the Far East in 1969. Our group met with the distinguished Prime Minister of Singapore, Lee Kuan Yew. He impressed upon us that the United States was "a creature of circumstance"—that these were his very words—could not carry out its obligations under the Constitution, surrender, or disgrace. His words were

...musibly disagree—that this is a practical solution. I do not think it is effective. I do not think it is fair. I do not think it is equitable. Above all I do not think it is workable. I do not think it is consistent with the President's constitutional war powers. I do not think it is a definite solution. I do not think there has been any advance of the letter or spirit of the Constitution which makes this ill-considered effort in order.

I likewise disagree with my eloquent friend, the gentleman from North Carolina. I do not think it will avoid the repetition of past mistakes. In fact, I can see nothing that would justify the resolution as written except a compulsion for self-assertion on the part of Congress. I know that Members of the House have all received letters concerning this resolution, some urging support for the measure as it came out of committee, and others urging major changes in its language.

My purpose here tonight is to examine briefly the reasons for the resolution. What is it that we seek to accomplish? What is the mechanism proposed to achieve those goals? And even more important, what is the likely result should this resolution as written be enacted?

In recent years many Americans in Government as well as in private life have voiced concern over what they saw as a diminution of the historic role of Congress as the final arbiter of war and peace. The proponents of House Joint Resolution 542 would have us believe that this measure addresses itself to that issue.

Let us look at the report. On page 2 it asserts that the Cambodian incursion of May 1970 caused many Members to be disturbed by the lack of consultation with Congress. Another reference on page 3 is to the commitment of U.S. Forces exclusively by the President without congressional approval or adequate consultation with Congress.

Madam Chairman, if all that were involved in this resolution were the importance of emphasizing the necessity for adequate consultation and reporting by the Executive to Congress, I would be for it, as I have been in favor of previous war powers resolutions.

Mention has been made by several Members with respect to the fact that since the House has acted favorably in previous years on war powers resolutions, but this resolution is quite different from what we have approved before. We have had, as I indicated, no basis for understanding the necessity of Congress for any legislation or even advice and consent on the legislation that is to play its historic constitutional role.

In another place, on page 3 the committee's aim was "to reaffirm the constitutionally given authority of Congress to declare war." The report also declares that compliance "will provide the Congress with adequate information on matters involving United States' war commitments and roles of our armed forces abroad".

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CONGRESSIONAL RECORD — HOUSE

June 25, 1973

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ing? And what is the meaning of the conflicting declarations that Congress must reassert responsibilities which were "inherited" by our Founding Fathers? At this late date is the Foreign Affairs Committee trying to spell out the intentions of those who wrote the Constitution? If so, just what responsibilities did the Founding Fathers intend to give Congress?

The proponents of this legislation consider section 4(b) the key, as the gentleman from North Carolina put it, of the proposal. The provisions of section 4 in my opinion lie at the heart of the problem. They task the entire effort.

Mr. STRATTON. Madam Chairman, I yield to the gentleman from New York.

Mr. STRATTON. Madam Chairman, I congratulate the gentleman from New Jersey for the very responsible and sensible analysis he is giving of this legislation. His contribution in the committee report was outstanding and I think his contributions in connection with the debate on this legislation have been outstanding. We are legislating here, and I hope to have something to say myself on that point in a few minutes, in a highly charged, emotional atmosphere where fact is fiction and fiction is fact, and I think the gentleman from New Jersey is one of the few sound bases in the Congress today on this subject. We can all feel what the temper of the House is, but the remarks of the gentleman are taken casually by we are going to have a discussion, pro and con, of some of the unwise aims, but the remarks of the gentleman are true.

Mr. FRELINGHUYSEN. I thank the gentleman from New York for his contribution in connection with the debate on this legislation have been outstanding. This is an extraordinary proposition. Especially as this debate will occur if there is a failure to act on part of Congress. The language tacitly assumes that the President, as Commander in Chief, has the power under the Constitution to commit our troops in times of crisis.

If he has that power, and I hope there is no argument on that point, how can that power be denied him? How can it be abrogated by the passage of a fixed time deadline? The gentleman from North Carolina says there is no power taken away from anyone under this proposition. Such exchange is given to Congress to take away from the President. Well, this attempt to deny the authority to the President except to deny a power which he has under the Constitution as Commander in Chief.

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Hard as it is to believe, section 4(b) as now written could create a situation in which no one in the U.S. Government—neither the President, nor the Congress—would have the responsibility for handling a national security crisis. The section provides that if the Congress fails to act—fails neither to approve or disapprove the deployment of forces abroad to meet a security crisis—then the President is enjoined from continuing the deployment.

In other words, let us assume that at some time in the future a situation arises which threatens the security of the country. The President meets it by deploying U.S. forces abroad. He then requests action to the Congress. The Congress is unable either to approve or disapprove the Presidential action. After 120 days, regardless of the situation and regardless of the threat to the United States, the President is enjoined from continuing to act to meet the situation in his best judgment. The threat to U.S. security continues, and there is no one in the U.S. Government willing and legally able to take the responsibility for making the decisions necessary to meet the crisis. It is one thing for the Congress to insist upon being able to participate in the decision to deploy forces abroad. But, surely, it is altogether another thing to say that if the Congress is unable or unwilling to make a decision, then the President also should be legally required to share that paralysis. Most Congress, in its desire to "assert itself," leave this between Congress and the President the steps necessary to meet some future threat to the security of the future decades. Surely not. Yet that is exactly what section 4(b) would do.

The manifest constitutional and national security problems created by the 120-day provision of section 4(b) are compounded by section 4(c). This section provides that hostilities and deployments initiated by the President may be terminated by Congress alone at any time within the 120-day period by means of a concurrent resolution. Concurrent resolutions, of course, do not carry the weight of law. Previous legislative use of a concurrent resolution—primarily during the Second World War—provided for the recall of additional powers granted the Executive by Congress. In contrast, its use in House Journal Resolution 542 simply represents a bald effort to terminate existing constitutional authority. Under such a theory, Congress could decide tomorrow that henceforth it could negate by concurrent resolution any action into which the U.S. had been drawn.

Furthermore, it is doubtful that this provision could ever be workable. As Presidents have throughout our history, it is probable that the Chief Executive will ignore a concurrent resolution if he does not deem it to be in his interest. And it seems to us particularly unwise to invite him to do so at a time of crisis.

Sections 4(b) and (c) do not add in clarifying a twilight zone of authority between the President and Congress. Of course, they succeed in raising a host of new constitutional difficulties. Whether they serve to enhance or diminish the security of the United States has gone through a rearing experience in Indo-China. During that period the executive branch proved to be less than forthcoming in its relationship with Congress.

I, for one, desire, indeed expect, the President to report fully and candidly to Congress, particularly during a crisis. For that reason, we have wholeheartedly supported the reporting and disapproving approaches to war powers legislation. The role of Congress would be enhanced by the President's legislation plan which would spell out the circumstances under which complex information would be provided to Congress. At that point Congress can decide whether to act.

The security of our people? Surely it is altogether another thing to insist upon being able to participate in some of the powers the White House has in times of major crisis and major con

That, of course, is utter hogwash. Anybody who was here in Congress during the years of the Vietnam war under President Kennedy, President Johnson and President Nixon, knows that this House repeatedly supported the action that was taken. There is no question about that.

That was here at the time of the Tonkin Gulf resolution, along with the gentleman from New Jersey, and this House could hardly restrain ourselves from doing what we did then. We should not be able to send it on the way, to the Senate, by a -vote. In fact, there were only two who voted against it in both Houses. And yet, if they failed to return to the Senate the next time they were up for election.

So there is no question about the fact that the Congress had plenty of opportunity to repeal the war if we had wanted to, and this thing was not slipped over because of some failure on the part of the Foreign Affairs Committee to devise proper legislation to equal out the balance of power.

Oh, there has been a lot of talk in this session about the need for Congress to assert its control and taking away some of the powers the White House has stolen from us. Well, the one area where there is no question about our authority to control is in appropriations, in the budgeting process. We have got to get our strings, all right, and no constitution needs some constraints. But there are a lot of constitutional constraints.

Of course, everybody knows that the President can decide where exactly the President's power begins. And so the congressional power to declare war begins.

One can get lawyers on both sides of that issue, and we could argue until the cows come home on it. But here we are, 3 or 4 days away from the beginning of fiscal year 1974, a year when we are supposed to be asserting the independence of the Congress, and the authority to exercise our powers. And yet we have still not even come up with alternate budget packages. We are still back in the day in the old business of passing indistinctive measures that hamper our ability to control and that we are trying to get out of the habit of trying to control the President's authority.

There have been a few Members of the other body who have devised an alternate congressional budget of their own. But I have been urging the leadership of the House, "If you do not like the President's budget," and I do not like it too much myself,—"then let us come up with an alternate budget." But we still have not gotten it. And we are dragging our feet in developing budget. We are still back in the day in the old business of passing indistinctive measures that hamper our ability to control and that we are trying to get out of the habit of trying to control the President's authority. And we are trying to pass the President's budget that the President's budget.

Hear Mr. FRELINGHUYSEN.

Mr. FRELINGHUYSEN. I believe this decision of Congress to be an effort to reaffirm a major principle of government: that the President cannot take a major action without Congress, the President's power cannot be stolen from us by the Congress.

Hear Mr. STRATTON.

Mr. STRATTON. Madam Chairman, I yield 5 minutes to the gentleman from New York (Mr. Bravo).

Mr. STRATTON. Madam Chairman, as I said a moment ago in the colloquy with the gentleman from New York [Mr. Perls], I believe this debate is taking place today in a kind of Alice in Wonderland situation, where we are really forgetting what the basic facts are. We are setting up some fictional; we are setting up some straw men, and then we are knocking them down.

I do not know whether I can get my remarks in in 5 minutes, but I believe there are some things that ought to be said in this debate and ought to be in the Record to be read.

One of them certainly is the concept that we add into Vietnam because this country will not be able or unwilling to add someday that somehow or other the President failed to do what we were not looking and we are only now getting around to retrieving the "balance of power" between the House and the White House.

Congressional Record—House

June 5, 1973
June 25, 1973

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Both the Congress and the President were given the tools for waging war. These powers were intended to enable our forefathers to make the necessary military preparations for a struggle between the Congress and the President in any event. The struggle will continue as long as the Republic survives.

In any event, the struggle has certainly ensued, and the President in this very important field. He has the opportunity for very swift action, even secret action. He has the one ultimate weapon which makes the decision. No cumbersome parliamentary procedure is required for the President to act with dispatch.

He also has vast resources at his disposal which are much greater and much more effective than those available to the Congress to rally public opinion behind a course of action.

If we were to adopt a very strict reading of the Constitution and the minutes of the debates of the Constitutional Convention as kept by James Madison, it is possible that we would produce here a bill which would prohibit the President from doing anything which would cause the United States to commit forces beyond the borders of the United States unless by action in Congress of the United States. That would be pretty close to what it seems to be the intent of at least the majority of those who took part in the formation of the Constitution. But it is obvious that that procedure has been regarded as proper by most of the Presidents throughout history, and in my view it does not accord with modern day necessities.

Almost every President in this century has seen at least one situation in which he felt a necessity to act, without in advance getting policy approval of the Congress. Was he acting in an unconstitutional and unlawful manner when he did that? How can anyone really decide, because the Supreme Court traditionally shies away from any ruling which settles issues of war powers between the Congress and the President.

Mr. Findley seems to be saying here in this body that he has been so inflexible, recognizing that there will be certain circumstances in which the Congress and the President will act without getting advance authority from the Congress to use military forces beyond our borders, but it provides a couple of, I think, very reasonable and very rational safeguards.

It provides, first of all, that the President may not continue this course of policy to which the Congress has not yet assented beyond 120 days. If the President is going to want to be left high and dry and dry and dry, he will not want to make this decision and set in train the sequence of events which will eventually terminate with the expiration of that period, he will surely use that time interval to try to sell his position to the Congress. He will not want to be left high and dry.

The other safeguard that this joint resolution puts into the statute is the authority of the Congress, which I say is a very reasonable and proper application of its war powers under the Constitution, to require the President to discontinue from hostilities at any time by a simple majority of both Houses.

That is the concurrent resolution approach.

Mr. PERSHINGHUYSON. Will the gentleman yield?

Mr. FINDLEY. I am glad to yield to my friend from New Jersey.

Mr. PERSHINGHUYSON. I thank the gentleman for yielding.

In his defense of the 120-day provision the gentleman seems to be suggesting that a President as Commander in Chief would take a decision to commit combat troops only really unless there were language that he could commit troops only for a period of 120 days.

Mr. FINDLEY. No. That interpretation is not justified. Under the terms of the joint resolution, a President would have to use the time to sell his position. This may well be one of the weaknesses of the provisions, because a President may escalate hostilities in order to sell the country on the propriety and advisability of the course of action he is undertaking.

In other words, it may have quite the opposite effect from what the gentleman says. Very rational is sounding. This proposal may well lead a President from making a wise decision with respect to commitment, or it may lead him make an over commitment in settled beyond 120 days. Without the President to discontinue on a course of action.

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tion as to whether the initial commitment of forces equipped for combat in Vietnam was either constitutional or in the national interest. Congress was never called upon to grant specific approval in connection with the stationing by President Kennedy of 16,000 troops equipped for combat, but the provisions of the war powers bill required the President promptly to make a report, and in writing to Congress, concerning his decision, the constitutionality or legislative justification of his action, and his reasons for not seeking prior congressional authorization.

This reporting requirement might have caused second thought by the President. It might have caused him to reconsider. If he went ahead with the plan, the report on the action would have provided Congress with a formal document on which to hold hearings.

Certainly the consideration of the report in 1962 would have been in circumstances more favorable to objectivity than existed when the Gulf of Tonkin resolution was passed in 1964.

To be sure, this procedure provides no guarantee that the Congress will undertake an examination of the report, but the basic information and opportunity would be at hand.

Reports would be required within 72 hours, with the modest exceptions noted, whenever forces equipped for combat are sent to foreign areas for any purpose.

Would the reports be so numerous as to deter the President from sending forces or equipment to foreign areas? If the Congress adopts the reporting requirement in the Resolution of September 7, 1967, the constitutional responsibility already resides with the Congress. The events to which the reporting procedure is applied would be of no particular value to the Executive branch before making the final decision to commit military forces to foreign territory or to enlarge substantially the military operations.

The enlargement of our forces in Vietnam through August 1964, when Congress approved the Gulf of Tonkin resolution, was passed in 1964.

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The aim of the reporting requirement is to facilitate the fulfillment by Congress of its responsibility to control the Nation to war, and also its responsibility to provide for the regulation of its Armed Forces.

Congress can hardly repudiate the Armed Forces as the Constitution requires if it does not even know where they are or where they are being sent. This expanded reporting requirement would place congressional influence far closer to the points and moments of great decision. It would require the President and his advisers to give thorough consideration to the judgment and re­solution of the Congress, as well as to the relevant provisions of laws, treaties, and the Constitution, to which they must turn for authority. Consideration of legal justification would become part of the decisionmaking process—not a subsequent exercise of small importance in which State Department lawyers handcraft a legal garment to cover the sub­ject long after the military action has been decided upon and undertaken. And the Congress, charged under the Constitution with the power to control the Nation to war, would be better equipped to fulfill its responsibility.

If enacted, House Joint Resolution 624 will establish for the first time in our history a formal statutory relationship between the President and the Congress with respect to the stationing of military forces on foreign territory.

For the first time the President will be required to report on his decision and his reasons for having taken it. In the event any question arises, the President is required to make a report to the House and Senate the day after his decision is made. Additional reports are required at least every 60 days after the initial report and within 15 days after any significant change in the President's decision. Additional reports are required at least every 60 days after the initial report and within 15 days after any significant change in the President's decision.

The second, war powers resolution provides that within 15 days after the President's initial report, the Congress may by concurrent resolution order the disengagement from hostilities of American troops committed without specific congressional authorization.

This latter provision is the safety valve of the resolution. It serves the dual function of permitting the President maximum flexibility to commit troops for a relatively long period of time—120 days. At the same time, it permits the Congress to fulfill its constitutional responsibility to decide by majority vote whether the Nation shall continue at war.

Some objections have been made to the use of a concurrent resolution for this purpose. An examination of 200 years of American history indicates that the use of a concurrent resolution is the oldest and most prominent constitutional device to check the President's power in time of war.

Using a concurrent resolution to dis­approve Presidential action is hardly new. Beginning in the 1790's, Congress regularly incorporated provisions for a legislative veto in legislation authorizing the President to effect a reorganization of agencies in the armed forces of the Government. All of the dozen or so Reorganization Acts of this century have contained a provision that disapproval

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Had this reporting requirement been in effect in 1962 when the number of U.S. advisors in Vietnam was raised to 7,000 without combat gear to 16,000 equipped for combat, President Kennedy would have been required to explain promptly and in writing to Congress the decision, the constitutionality or legislative justification of his action, and his reasons for not seeking prior congressional authorization.

Had Senate Joint Resolution 1 been law, it would have required a prompt, written detailed report on:

The Berlin airlift following the blockade of that city in 1948.

The invasion of U.S. troops in Korea in 1950.

The enlargement of our forces in Europe in 1953.

The sending of reinforcements to Berlin after the German border was opened in 1951.

The deployment of our troops in Thailand in 1962-63.

The various troop build-up stages in Vietnam through August 1964, when Congress approved the Gulf of Tonkin resolution.

The sending of Marines to the Dominican Republic in 1965.

The bombing of Laos in early 1971.

Present activities over Cambodia.

These are some of the major events since the end of World War II involving American troops in which neither prior nor subsequent congressional approval was sought by the President.

The events to which these are relevant undertaken without specific prior authorization of the Congress. Each involved armed conflict or the definite anticipation of armed conflict. Each was endorsed in the U.S. Senate, while each would have required a report to Congress under House Joint Resolution 542.

The aim of the reporting requirement...
of the President's plan by either House of Congress. The veto would prevent putting his plan into effect.

On February 21, 1962, the House vetoed the President's plan to reorganize the Federal Communications Commission. On July 20, 1961, the House vetoed the President's plan to reorganize the National Labor Relations Board. On February 21, 1962, the House vetoed the President's reorganization plan for the Housing and Home Finance Agency.

Many members of this body were present for these votes, as well as several more recent votes approving reorganization plans, and I do not recall even a whisper of criticism of this procedure as being unconstitutional.

The precedent for use of a simple or concurrent resolution so far beyond reorganization plans. According to the Library of Congress:

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they "are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or an authorization of the Congress." Thus, if there is an attack upon the United States itself, a concurrent resolution would not be appropriate. And I believe and we do believe no Member of Congress would wish to disregard our two Constitutions in such circumstances.

Perhaps, if the House in its wisdom decides to retain section 4(b) requiring that Congress act within 20 days to ratify the commitment of troops, then it would be legally inconsistent for the House to delete section 4(c) or to require a joint resolution of disapproval. Under section 4(b), after 20 days the Congress may by joint force of the President to terminate a commitment and disengage troops engaged in hostilities abroad. It would be ironic indeed if the Congress could require the President to disengage our troops by joint action, but could not require the President to disengage those same troops by passing a concurrent resolution as provided for in section 4(c).

Section 4(c) of the war powers resolution provides a means of preserving presidential authority and augmenting congressional control in an area that presently is not subject to effective control through Congress' traditional oversight powers. It strengthens the checks and balances which the Founding Fathers put at the base of our political system, at the same time, it preserves essential flexibility to the President.

No attempt is made to equate the process by which amendments to the Constitution are proposed and section 4(d) of the war powers resolution. The constitutional amendment procedure is cited as one example of a resolution which is not submitted to the President for signature, as section 7 of the Constitution would seem to explicitly require, but which nevertheless has the effect of law.

The amendment procedure simply states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, and by the Conventions of three fourths of such States, Proposed in Congress, and ratified by the Legislatures of three fourths of such States, or by Conventions thereunder as they shall by Law direct.

The Constitution does not state whether or not the President shall sign a resolution proposing an amendment, and section 2 of the amendments of section 7 of the Constitution would seem to indicate the requirement of a presidential signature. As early as 1841, in the case of United States v. Kingsbury against Virginia that a Presidential signature was not required, section 7 of the Constitution notwithstanding.

Thus, although the ratification by the States follows, the State legislatures might be analogous to a Presidential signature, it cannot be squared with the explicit constitutional requirement that Amendments, if proposed in the manner prescribed in the first and tenth clauses of article V, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, and by the Conventions of three fourths of such States, Proposed in Congress, and ratified by the Legislatures of three fourths of such States, or by Conventions thereunder as they shall by Law direct.

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I was skeptical about our ability to draft a subcommittee which drafted the bill, and with the powers of the Congress but which concluded, I was convinced that the committee had not only drafted a workable bill, giving Congress an effective role in shaping warmaking policy. House Joint Resolution 542, is to the Constitution, and set in motion the machinery necessary for making Congress an effective force in shaping the Nation's armed policy abroad. First, House Joint Resolution 542 would give Congress the fruitful its constitutional responsibilities for warmaking powers. The constitutional and the reporting requirements would give the Congress the initiative necessary to carry out the obligations under the Constitution. In the past, the Congress has not had adequate information to effectively direct foreign policy decisions, particularly when and whether to commit the American people to war were at issue. By requiring the President to keep the Congress abreast of significant changes in our foreign policy, this section 8, clause 12, 13, 14, 15, and 16, and the constitutional provisions thereon. Section 8, clause 15, vests in him the powers of Commander in Chief of the armed forces. The notes made by both Hamilton and Madison at and after the Constitutional Convention support the theory that the Constitution vests in the executive the power to decide when and whether to commit the American people to war. Even though Hamilton argued that foreign policy was inherently an Executive function, implementation of that policy must depend on the independent authority of the Congress. Against this background, I find unpersuasive arguments that cite the Commander in Chief in the Constitution, the Congress, and the President were intended to be partners in war. The weight of evidence suggests that Congress was intended to be the dominant partner, retaining the independent authority to commit the Nation to hostilities. The practice of the President, however, has resulted in a total reversal of the relationship. This stands in sharp contrast to the Constitution. That choice, I believe, would effectively aban- don the ideal proposed by the framers of the Constitution. Our alternative is to reverse the trend of history, and restore Congress to a position of partnership in shaping warmaking policy. House Joint Resolution 542 is, in my estimation, a bill which closely reflects the intent of the Constitution, and would set in motion the machinery necessary for making Congress an effective force in shaping the Nation's armed policy abroad.
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Second, section 4 gives Congress the capacity to exert greater control over the Executive's military power abroad. I think the heart of this section is simply reversed the chronology of the legislative process because the Executive acts without prior consent of the Congress there can be no valid warming. I think that is wholly inappropriate that when the majority of Congress there can be no valid warming.

In another sense this bill conditionally delegates to the President the provisional authority to commit Armed Forces abroad. In the context of modern diplomacy, I think that such a grant is a necessary expedient. It recognizes the need to give the President flexibility in protecting national security. At the same time, however, Congress retains its right to withdraw that conditional delegation of authority.

Unfortunately, we have little judicial precedent to look to for guidance. I want to point, however, that as Members of Congress we are sworn to uphold the Constitution. We ourselves have the ability to make precedent. While I have heard objections that this bill contains provisions of dubious constitutionality, I do not see how a return to the letter and spirit of a constitutional amendment could be considered questionable. We are not creating any precedent where we are simply trying to reverse the present erosion of constitutional obligations. In fact, I have serious doubts about the exercise of such power, a precedent that we have witnessed in the last 50 years. Critics of the President have made a point that recent events have underscored the need for such a bill. I also agree with it. I think that the President..
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sentative capacity the Congress must seek
to curtail. Even American history indicates that the result we have reached today was by no means inevitable. We have endorsed increasing amounts of authority in the President of this country to be based on expediency rather than necessity.

In the post-World War II years, there was genuine cooperation between the Executive and the Congress, often resulting in compromise to the legislative will in order to finance and conduct war.

At point one Jefferson refused to permit the American naval command to do more than disarm and release enemy ships guilty of attacks on American ships engaged in trade with the United States until he had received congressional approval for the First Barbary War. Congress took an active role in opposing executive action—fierce in Cuba, lenient in Alaska, and Grants in Santo Domingo, and the Executive acquiesced.

Between 1900 and 1945, close cooperation between the Executive and the Congress became the exception rather than the rule. The trend gained full momentum under Theodore Roosevelt. He acted unilaterally in South Africa and in the Orient, when he sent several thou-
sand troops to the Boxer Rebellion.

Franklin Roosevelt continued the practice of bypassing the Congress by ordering the second World War. By 1945, the United States had invaded Iceland and Greenland and by ordering the occupation of the territory and territorial waters.

Beyond the reporting provisions which are the source of that power, the moment the President, it may]

The essence of this argument is sup-

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tional law expert, Paul Freund. I wrote him a letter in advance of this opinion, of the constitutionality of section 4(e) and am including the text of his reply at this point in the Record.


Dear Commissioner du Pont: I am glad to respond to your letter of June 1, inviting an expression of my views on the validity of sec-

4(e) of H.J. Res. 542, providing that a concurrent resolution of both Houses of Congress may require the President to withdraw from foreign military forces from action outside the territory and territorial waters and air-

space of the United States, where the con-
misliment of armed forces was made without prior authorization of Congress. It is well to indicate that it does not involve the situations listed be-

low which raise distinctive questions:

1. Disapproval of executive action by one House, or by a Committee or other agency.

2. Disapproval by concurrent resolution of executive action in a matter where the President has exclusive constitutional power to commit troops abroad.

3. Disapproval by concurrent resolution of executive action in a matter where the President has paramount congressional power to commit troops abroad.


The present question arises in a field where the legislative and the executive branch each has its constitutional responsibilities, the Congress (by ordinary legislation) to declare war, the President to act as Commander in Chief. The President may be permitted to exercise emergency powers to protect American interests abroad, but committing armed forces expedites the establishment of continuing hostilities is vested in Congress. Congress may not provide the President with the power to initiate war through ordinary legislation. It is to be noted, however, that the President has paramount constitutional power to commit troops abroad.

In the case that the President will see to it that the substantive provisions of the bill, the provision respecting a concurrent resolution is a valid and appro-

priate measure, and does not raise constitu-

does so, however, under the condition that the President may no longer be authorized because of its institutional superiority.

We have discussed the need for an effective and responsible Congress. It meets the demands of the tim es and conditions. The President has the advantage of unity and expediency and secrecy were the pre-

This, however, is not to suggest that the instant of its constitutionality, I would like to dis-

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sponsibilities in dealing directly with the major issues confronting our country. And third, it may deny to the Members of Congress the opportunity to voice their views in this kind of question of war or peace, life and death of American servicemen.

In the light of this deficiency, therefore, I intend at the appropriate time this Wednesday to offer an amendment to section 4(b).

Madam Chairman, I would like to read this amendment for the record, so that the Members of the House will have an opportunity to review it in the days ahead.

The amendment reads as follows: Within 130 calendar days after a report is submitted or is required to be submitted by the President pursuant to section 3, the Congress by a declaration of war or by the passage within such period of a resolution appropositive to the purpose, shall either approve or disapprove the President's action pursuant to the section of the act taken by the President and reported to the House. If both Houses act to either approve or disapprove, it is very clear what would happen. What would the gentleman's opinion be if one House passed a resolution of approval and the other House either defeated that resolution or passed a resolution the other way? Would the President then be able to carry on or would he have to withdraw?

Mr. WHALEN. I am afraid I see unable to answer the gentleman's question at this time. I have studied this question in considerable depth, and I got different sets of answers. One might equate it with a declaration of war, where failure to declare war in one House would mean that there is no war declaration. On the other hand, I have received advice that it is necessary that both Houses must agree.

Let me say this. I intend to research this further, and at the time the amendment is introduced, I would hope to have a more specific answer.

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

Mr. WHALEN. I yield to the gentleman from Illinois.

Mr. FINDLEY. The gentleman is using the word "resolution." Does that mean a concurrent resolution or a joint resolution?

Mr. WHALEN. I use the word "resolution" advisedly. This may be either a joint resolution or a concurrent resolution, to be decided at the time that such report is submitted to Congress. Specifically, it could be either a joint or a concurrent resolution.

Mr. FINDLEY. If section 4(c) remains in the bill, as I trust it would, this provides for termination of hostilities by concurrent resolution. Then would not the President have the authority to declare war and the powers of the President are as Commander in Chief of the Army and Navy. By the way, I have been very curious about whether he is Commander in Chief of the Air Force and the Department of Defense, I will have that question for another time.

One thing that Congress has been concerned and, one way or another, we want to speak and say something. We can debate the constitutional issues, and we should—but what means for the Congress to declare war and what the powers of the President are as Commander in Chief of the Army and Navy. By the way, I have been very curious about whether he is Commander in Chief of the Air Force and the Department of Defense, I will have that question for another time.

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Madam Chairman, I would like to commend the gentleman from Ohio for his statement, and to ask the gentleman if the gentleman is not fearful that proponents of the amendment may not feel that inaction by Congress is a key to what they consider a way of balancing power?

I would guess there has been inaction, and inaction characterizes Congress in a number of areas, that is it is felt that the only way to reverse national policy is by having something happen if Congress does not act. That is the thing that makes me fearful of the prospect for success of what the gentleman from Ohio is arguing. If the effort is to undermine the necessity of Congress to face up to its own responsibility, how could we be against it? But if it happens to face up to its responsibilities, to say they approve or disapprove, then we get a chance by the passage of time. There is an important role for the recongnizing role of Congress in this, and it is an issue the Congress is reconciling with.

Mr. WHALEN. I would agree with the gentleman that if the present language is retained in section 4(b), it would, in my opinion at least, mean that Congress is not facing up to its responsibilities. We can have a great deal of talk these days about Congress reasserting itself. Certainly I think we are just going from one extreme to the other. What I seek to do through this amendment is to provide—

Mr. FINDLEY. Madam Chairman, the gentleman yield?

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

Mr. FINDLEY. What would the gentleman say to the gentleman's amendment? In the event that both Houses act to either approve or disapprove, it is very clear what would happen. What would the gentleman's opinion be if one House passed a resolution of approval, and the other House either defeated that resolution or passed a resolution the other way? Would the President then be able to carry on or would he have to withdraw?

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Unless we bring down the entire Government, there is no way by stopping any current operations that we can do that, or, if we go back and pick up past operations, they will continue while the President has the power to spend. If the President claims that by his act of December 23 he has the right under the Constitution and spends the money, we have no choice. We may have a clear-cut, beautiful issue and we would be presented with the question whether we want to impeach our Chief Executive; but we do not stop the war that way and we do not stop expenditures.

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Unless I want to be consulted at the very beginning if it is at all possible; then we would expect the President to terminate under those very limited conditions set forth in the resolution unless the Congress again so directs.

So under the pending resolution Congress should be required to act twice. That is an affirmative action now, not only some affirmative action in the future. This resolution does not tie the right of the Congress to act affirmatively again if it so desires by a very simple priority procedure whereby any single member can offer a resolution that must come to a vote. It seems to me that we have given Congress two opportunities instead of one to act on the matter. So I say that what is involved here is primarily the principle of the Congress staging right now in this resolution how it feeds on future commitments of U.S. forces by the President.

We have been struggling with this problem a long time. This committee for a moment the pending resolution is unconstitutional because this is a declaratory resolution or in some way attempts to modify the present commitment of U.S. forces. The Constitution—of course we cannot do that. The Chair has certain powers under the Constitution. If he claims and exercises his right under the Constitution contrary to the intent of this bill, he has to do it in the face of the expressed intent and will of the Congress of the United States. He can do it. It is within the scope of the authority of the President which I believe is subject to change by the Congress. If he claims and exercises his right under the Constitution contrary to the intent of this bill, he has to do it in the face of the expressed intent and will of the Congress of the United States. He can do it. It is within the scope of the authority of the President which I believe is subject to change by the Congress.

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The need for legislation is imperative. It is imperative that this be done.
hours to both Houses a written report clearly setting forth the circumstances necessitating his action, the authority under which he took that action, and the anticipated scope and cost of the action.

Unlike the legislation passed last year by the Foreign Relations Committee, House Joint Resolution 543 does not seek to define those kinds of action which can be taken absent a declaration of war. To do so, in my mind, would further expand the President's authority as Commander in Chief. Under the House proposal, it is up to the President to justify his action and cite the statutory or constitutional authority under which he acted. To specifically define his authority as SS. 440 seeks to do, would give the President statutory authority he does not now have. House Joint Resolution 543 avoids this, and in addition specifically states that the proposal does not add to any existing powers of the President.

A significant change in House Joint Resolution 543, not included in proposals considered by the House previously, would terminate within 120 days authority for the continued use of the Armed Forces. The other body has proposed that emergency authority exercised by the President shall terminate within 90 days unless the Congress acts to authorize its continuation.

I have argued that such a requirement would have the effect of tying the hands of the President in a situation of rallying, in a pro forma manner, as we are in this present situation. A call by the President to protect the national security of the United States is an act which would build strong sentiment and emotion to the point that Congress would not quickly act to authorize the continuation.

On the other hand, I believe that a 120-day period is sufficiently lengthy time to allow emotions to subside and the consultation as this bill will do, far as I can see, to the process and runnable with

It is important that there be some limitation on emergency authority which the President must have. I think the suggestion made in House Joint Resolution 543 meets the objections of congressional ratification, and provides that boundary.

This bill's applicability to the ongoing conflict in Southeast Asia, I think, is because of our military involvement there and the extremely broad interpretation of Presidential "Commander in Chief" powers to continue and expand that involvement, that has led to this debate and all those that have preceded it.

The House has again today reiterated its opposition to further military involvement in Southeast Asia, and the bombing of Cambodia and Laos. Despite the "end" of the Vietnam war, the signing of two peace agreements, and the clear message of the people and the Congress, however, the President continues the bombing, with no authority. The administration has made it clear that regardless of whether the Congress denies funding for the bombing, funds will be made available.

It is such a situation we must guard against. We must never again let our country go to war, piece by piece, as we have done in Southeast Asia. The responsibility belongs in the Congress to insure against that possibility. The responsibility, under the Constitution, of committing U.S. troops to armed conflict is one shared by the legislative and executive branches of Government. The balance between the two branches has swung heavily to the executive and we must act now to restore it.

I urge your strong support of House Joint Resolution 543.

Mr. MAILLARD. Madam Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. BUCHANAN).

Mr. BUCHANAN. Madam Chairman, running through the course of this debate has been the recurring theme that Congress ought act to affirm and fully constitute its constitutional responsibilities in the event of military action initiated by the President. In the face of a presidential emergency action, Congress should stand up and speak out in approval or disapproval.

I find it very hard to understand, therefore, why it would not be a good idea to not only require the reporting and the consultation as this bill will do, but also to mandate action by the Congress when the amendment which will be offered by the gentleman from Ohio (Mr. WEXNER), and a similar amendment offered by me in the committee would do, as I have a responsibility under the Constitution, and a responsibility to the American people to take definite, positive action in such a situation. Yes, Mr. Speaker, I think it is possible, and Congress could act in response to the Presidential action; and it could, I think, have an impact.

This is positive action, and I would not only support action to the provision of the present bill in section 4(a) of the measure which I am myself sure that Congress does nothing at all, a major decision is made thereby.

There has been reference made to the "procedural" nature of section 5 in this resolution as to what shall be reported and in case a resolution is presented on this subject, I refer to the language of the bill, section 5(a).

So, any resolution or bill introduced into Congress after not more than 30 days before the expiration of the one hundred and twenty-day period in which such resolution or bill shall be reported out by such committee, together with the recommendations, not later than thirty days before the expiration of the one hundred and twenty-day period specified in said section.

There may be 50 differing resolutions offered. The bill says that they shall be referred to the Committee on Foreign Affairs in the House and to the Committee on Foreign Relations in the Senate, and that one such resolution or bill shall be reported out by such committee. Who shall decide what resolution or bill shall be reported out by the committee, of the majority which may be offered? Who shall determine that the chairman of the Foreign Relations Committee of the other body will bring the same kind of resolution as the chairman of the Committee on Foreign Affairs might? They might be entirely opposite resolutions.

How can we be sure that we will not get into a confused state by indiscriminately actions of those committees in the two bodies, as to which shall end up with the 120 days expired and no action taken by the Congress, so that it would be forced to withdraw the troops, although it might, be not in the national interest to do so?

I would suggest that as written this joint resolution in this and other respects is a defective resolution.

I would further suggest in my own humble opinion it is not very easy to spell out the war powers of the President or what they may or may not be except by amendment to the Constitution, which this body and the people together could do if we saw fit to do it and could agree on the spelling out of the powers.

I would agree that we could cut the money off, as others have suggested, to stop an action. I would say to my friend from Florida that nothing would preclude the President from pushing the button on the 115th day under this measure, if he proposed to put the button for a nuclear holocaust, God forbid. I would say, however, Madam Chairman, that this joint resolution a better joint resolution than a resolution which would mandate action by the Congress to the extent of anything as done here.

Are you going to withdraw the troops? Then you would be not in the national interest, if you were to withdraw the troops.

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

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

Mr. KEMP. Mr. Speaker, I yield the chair to the gentleman from Alabama.

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

Mr. MAILLARD. I yield to the gentleman from Alabama.
Mr. MAULL. Madam Chairman, I yield the gentleman 2 additional minutes.

Mr. BUCHANAN. I thank the gentleman for yielding 2 additional minutes. I am from New York, Mr. ECKHARDT, as you know, and I am interested in the debate.

Mr. KEMP. I have not made up my mind. That is why I am yielding to the debate.

Mr. BUCHANAN. I understand the gentleman is from New York.

Mr. KEMP. Yes, and I am from New York.

Mr. BUCHANAN. Well, I am interested in the debate. I understand the gentleman is from New York. I am from New York, Mr. ECKHARDT, and I am interested in the debate. I understand the gentleman is from New York.

Mr. ECKHARDT. Thank you, Mr. BUCHANAN. I want to thank the gentleman for yielding 2 additional minutes. I am from New York, Mr. BUCHANAN, and I am interested in the debate. I understand the gentleman is from New York.

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throughout the history of the Republic and it is one on which it is very difficult to draw legislation, because it inevitably involves constitutional questions. It has a long and interesting history which might be discussed if there was time.

The gentleman from Wisconsin and the members of this committee have produced a bill here for which we can thank them. The vote of the committee is not final, however, because it raises a topic for debate which ought to be debated and considered in this Congress.

In support of the work which has gone into that bill by the distinguished committee, the distinguished chairman and the distinguished subcommittee chairman, for all of whom I have the very greatest respect, I submit to you that there are at least four serious and, I think, fatal drawbacks to House Joint Resolution 542.

One is the matter which we have discussed at considerable length here today, that which has the Congress set vital policy in this vital field, and by doing something, but by failing to do anything. I feel that is a very great weakness in this bill. And of course I would support the amendment to be offered by the gentleman from Ohio (Mr. Waxley), but, as I will discuss with you in a moment, I have a bill of my own on this subject, which is a complete bill, and which, if the parliamentary situation permits, I shall offer and perhaps carry, that will likewise cure that same situation, in the same way, and also do certain other things.

Mr. STRATTON. Madam Chairman, I yield the gentleman.

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

Mr. STRATTON. Madam Chairman, I just want to say to the gentleman that I think his bill is an excellent bill, and I certainly would support it if the gentleman offers it, if and when the parliamentary situation permits, but prevent its acceptance, and then I have a similar version which I intend to offer at the proper time.

I think what the gentleman from Indiana wants to do is to require positive action by the Congress as being the proper way to proceed. And I commend the gentleman for his efforts.

Mr. DENNIS. I thank the gentleman from New York for his assistance and support.

The second thing which I feel is a serious drawback to the committee bill is this matter of providing that if we wish to discontinue hostilities which have been instituted, we can do it by a concurrent resolution of the Congress, to labor the point unduly, but I think this is a matter of considerable importance, if it is to go to the Committee on the Executive, it has to have the binding force of law. I think that the Congress must see that all the authorities say that if we are going to do something, we should see that it is done, and that something which is legislative in character, then we have to go through the normal legislative process, which, for better or worse, requires precedent to the executive. I think there may be an amendment offered on that subject.

Thirdly, the committee bill applies to existing hostilities. And while that is not as important as it would have been with the Vietnamese war was in progress, I think it is better to look calmly toward future actions rather than try to deal in this legislation with something that is in progress and has been in progress. I think the committee bill says it applies to those which are presently existing, and I think that might be wiser to make it apply only to wars which come into being after the statute has been enacted.

Mr. WOLFP. If it does not apply presently existing wars, this says wars that are in progress at the time of passage. Mr. DENNIS. Presently in progress at the time of passage, so they have to be presently existing, they started before the passage of the resolution.

Mr. WOLFP. So we should disregard that ever, then?

Mr. DENNIS. It would not disregard it under this bill. What I am saying to the gentleman from New York is that I think it would be a wise measure if we did not try to apply it to something which is already in progress when we passed it.

The gentleman may disagree with me, but that is a matter of opinion.

The third problem is this: There is a point which I cover in my bill and which is not covered in the committee bill, and which I think is a very important point. I have this in my bill; I provide that not only must the President make a statement of war, or no attack on this country. But also the President must make some periodic reports, if we approve in the first instance, of the progress of affairs, of the progress of hostilities, if any, at intervals not to exceed 6 months; and within 90 days after each of those subsequent 6-months reports we must again vote approval or disapproval. In no case, under my bill, do we stop the action unless we vote disapproval, but we do have a recurring opportunity to do that, a continuing oversight of the situation; and in each case, both the first time within 90 days and thereafter every 6 months, within 90 days, we are required to vote. We have to act. If we vote disapproval, the President has to call off the troops. He also disapply not to hostilities which might be existing before it became law, and it does not affect existing treaty obligations, whatever they are, which I do not attempt in the bill to define.

I am going to suggest to the Members that a bill that be successful in this field has to be one which provides for congressional participation, which also does not hamstring the Executive, and which allows flexibility and action on the part of both of them. I have made a very serious effort, I will say to the committee, to draw that kind of a bill.

I would also like to suggest that I suppose we are trying to adopt a measure which will be put into law and which might stand some possibility, even, of overtaking a plenary Executive veto. I suggest to the Members that the bill I have drawn has a better chance to pass and a better chance, if that situation should arise, to sustain itself against any possible Presidential veto than does the committee bill.

Mr. FREELINGHUYSEN. Of course it is for all reasons. But my point is that we have in our bill a substitute, that will be the gentleman for his state­ment, and as a substitute, that bill is an excellent bill, and I think his bill is an excellent bill, and I commend the gentleman for his efforts.

Mr. WOLFP. Madam Chairman, if the gentleman so will, does the bill provide for a specific war, or is it for all wars?

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

Mr. FREELINGHUYSEN. I should like to commend the gentleman for his statement, because he does underline some very serious weaknesses of the proposal as it is written. I think it also should be emphasized that the gentleman from Texas underlines another weakness which is very dimensional, and that is the extent to which the proposal perhaps inadvertently may expand Presidential authority far beyond what is presently understood to be the limits of his constitutional power. So we have both a contraction and an expansion. We have limitations imposed on him in some absolute and probably unconstitutional way.

Mr. DENNIS. I agree with the gentleman from New Jersey, and I will say any legislation in this field is extremely difficult. I came to the conclusion only somewhat reluctantly, and after a great deal of study, even that anything should be attempted, but I believe there has been sufficient erosion of congressional power to justify the effort, providing that we can do something with which we have a chance to live, something which can acturally operate, something which merely gives the Congress—and that is all I am doing—a tool to use rather than the most exx approach of the appropriation process, I propose a measure which will permit us to go ahead, and to discharge our function in this field under the Constitution.

Mr. FREELINGHUYSEN. I thank the gentleman.

Mr. ZABELL. Madam Chairman, I yield 1 minute to the gentleman from Texas.

Mr. MILFORD. Madam Chairman, I am strongly in favor of a war powers resolution and once again return to the Congress its constitutional power to decide when and where to fight and the kind of actions.

I am strongly against House Joint Resolution 542. The situation is dangerous to this Nation, as it is, and should be dangerous to this Nation, and it is the World War II variety which will probably never occur again. I think it is obvious to all that no country could win a nuclear war.

Mr. FREELINGHUYSEN. And I believe that this Congress shall again be assembled.
for the purpose of declaring war in the sense written in our Constitution. Combat actions are another story. The legislative branch, inasmuch as it controls the purse strings, has the ultimate capability to prevent a declaration of war, and, to a limited extent, to curtail an undeclared war. However, the power to engage in war, to declare it, and to order its conduct, is vested in the Executive Branch. Our Constitution assigns numerous legislative powers to the President. Article II, section 2, defines the powers of the President, and Article I, Section 8, forbids Congress to engage in war without the President's consent. This particular provision becomes most critical when Congress finds itself in the position of the President, that is, when it and the President have divergent views on war. The President has the responsibility to carry out the law, whereas Congress has the responsibility to make that law. Therefore, the President has the ultimate authority to carry out Congress's will. The President must be able to act decisively in emergency situations. To this end, a concept that has gained wide acceptance in recent years is the War Powers Act, which gives the President the authority to declare a national emergency and to use military force in response to that emergency.
The President is to be the Commander in Chief of the Army when the Congress provides for it. This line in the Constitution refers to the command of the nation's military forces in time of war. It is a separation of powers of government; the Commander in Chief has no legislative or executive functions. The President is to receive the nation's forces in case of invasion or rebellion, but he is forbidden to assemble them unless the Constitution or a law of Congress provides for it. His powers are derived from his office as President and Commander in Chief, not his status as a member of the Congress. The President's role in foreign affairs is that of a diplomat and negotiator, not a military commander. The President is to be present in the Congress while it is in session, but he is not to vote except when the vote is equally divided. The President's power to veto legislation is a check on the legislative branch, not a means to control the Congress. The President's role in the Constitution is to be the executive branch, to enforce the laws and to take care that the laws are faithfully executed.
June 25, 1973

House approvals—w e once again g ave the question of war powers very careful consideration.

The subcommittee chaired by the gen- eral chairman, Mr. Kazen, once again held extensive hearings on the question of war powers and resolutions which were referred to the Con- gress on Foreign Affairs.

There were some 37 proposals, each of which was heard 16-20 times, including eight Members of this body.

The subcommittee subsequently con- sidered all suggested approaches to war powers and after four long sessions came up with the draft which was introduced as House Joint Resolution 542.

The full Committee on Foreign Af- fairs devoted three full sessions to per- fecting the subcommittee version. The result is—I believe—a measure which represents a consensus of views on how Congress should legislate in this vital area.

Madam Chairman, since I have been in the Congress, the United States has partic- ipated in two major conflicts. Each of those conflicts has raised impor- tant constitutional problems concerning war powers.

In the Korean conflict, 1950, North Korean troops crossed the borders of South Korea trig- ger ing the Korean War.

On June 27, President Truman an- nounced it as his proposal that United Nations Congress give the Korean General Assembly troops cover and support. Following a United Nations resolution calling on members to stop this aggres­ sion, President Truman ordered Amer­ ican ground troops to repel the North Korean attack.

Congress was not called upon to de­ clare war at the time of the invasion in Korea.

At that time it was believed by many in the executive branch, and in the Con­ gress, that by becoming a member of the United Nations, the United States was obliged by U.N. commitments, includ­ ing commitments to international police actions, and that it would be within the power of the President alone to see that those commitments were carried out.

Although the Congress did not for­ mally accept this position, neither did it as a whole count the right of the Executive to respond to the call of the United Nations Security Council.

Some members, however, were out­ spoken in their view that power of Con­ gress had been usurped. Among these was the late Republican Senator from Ohio, Senator Robert Taft.

The Congress, from January 1951 and 1952, Senator Taft's views gained more and more support.

Some of you may recall that the Kore­ an war was so called "consideration"—the Korean War. Unfair as that may have been, the reality was that the Korean War was a Presi­ dential war since Congress had not de­ clared it or given specific authoriza­ tion to the Executive to respond to the call of the Congress.

Executive to respond to the call of the was the great Republican Senator from

1952, who spoke in their view that power of Congress had been

The question of war powers very careful considera­ tion was the basis for similar criti­ cisms. The legal authority of the Presi­ dent to deploy American Armed Forces into hostile country has been under constant attack.

Many of us have believed that the Gulf of Tonkin resolution—with its undeclared and strong words—provided au­ thority to the President to conduct hos­ tile activities in Indochina.

The present administration, however, has made it clear that its authority for continued pursuit of the conflict was not derived from the Gulf of Tonkin resolution.

Because there has been doubt and con­ cern over the right of the President to conduct large-scale military actions in Vietnam without specific prior approval from Congress, national disunity over the war was accelerated.

Today, a similar situation exists with regard to the continued bombing in Cambodia.

Many observers believe that continu­ ation of those operations requires that the President ask the Congress for specific authorization. Once again there is con­ fusion and the Nation is divided.

As the result of our country's experi­ ence in Korea and Vietnam, one lesson should be clear to everyone:

Congress must play its rightful role in warmaking—not only to satisfy the de­ mand of the Constitution—but also for the practical reason of creating the na­ tional unity and purpose which are necessary for the success of our national effort.

Our national security, no less than our national heritage, demands that Con­ gress fully participate in the deci­sion to go to war.

In a statement before a House Foreign Affairs subcommittee last year, the Hon. McGeorge Bundy, a former Assistant for National Security Affairs to both Presi­ dents Kennedy and Johnson—stated— he that the most serious foreign policy problem facing the United States is the breakdown of effective relations between the executive branch and the Congress.

He noted that the breakdown was most consciousness—and damaging—with re­ gard to the Vietnam conflict.

I believe we all recognize the need for re-creating a good working relationship between the White House and the Con­ gress on vital foreign policy and security issues.

Congress must play a junior part­ ner role where decisions involving the commitment of American troops is in­ volved. Neither should we attempt to force such a secondary role upon the President.

Our hostilities in Vietnam give him the right to make decisions which may have implications that we would dis­approve.

We must avoid the power of the President.

The resolution does not attempt to de­ scribe the situations in which the President may or may not deploy our forces, but that, too, would introduce elements of rigidity into our national security system.

Rather, this resolution sets forth a procedure for insuring that whenever a significant number of American forces are deployed into hostile areas of Indochina has been under constant attack.

As written, House Joint Resolution 542 would allow the President to pre­ serve the security of the United States in a case of national emergency. I agree that the President must have the power to defend the United States in case of an attack. But I believe that no single man should have the power to commit our lives and resources to the future Viet­ names of the world.

The intent of our Founding Fathers is clear. Article 1, section 8, of the Con­ stitution specifically gives to the Con­ gress the power to declare war and make rules for the regulation of Armed Forces. The writings of Jefferson, Madison, Mon­ roe and others make it perfectly clear that no warmaking power is given to the President.

Lincoln reiterated this when he said:

"...
The President should be authorized to use the Armed Forces in defense of the United States. I am proud to be a cosponsor, and I urge my colleagues to join me in support of this legislation.

Mr. PARKER. Madam Chairman, I wish to urge my colleagues to support this legislation, which, in my view, is essential to the preservation of our nation's security. It is a necessary step in ensuring that the President has the authority to take action to protect our country against the threat of aggression.

The Constitution gives the President the power to declare war, but it is clear that the President needs the ability to authorize the use of military force in situations that are not covered by the Constitution. This authority is necessary for the President to act quickly and decisively in situations that pose a threat to our national security.

The legislation we are considering today, House Joint Resolution 542, would provide the President with the authority to use military force in defense of the United States, as defined by the Constitution. It would also require the President to report to Congress on any action taken under this authority, allowing Congress to review and possibly overturn the President's actions.

This legislation is necessary to ensure that the President has the authority to act in situations that are not covered by the Constitution, and it is essential to maintaining the security of our nation. I urge my colleagues to support this legislation and to work together to ensure that our nation is protected against the threat of aggression.
June 25, 1973

ever be judges that there is an im- norments of the United States, or its forces or citizens anywhere, as provided by
year we are entering the White House what could become a blank check. On the
case in Pinson v. United States, 95 U.S. 880, cited above, I would say that, with more restricted circumstances in which a President could take action, how do we know that we may not be unduly limited in his hands in some unforeseeable future crisis which genuinely threatens our national security.

In my own proposed war power bill (S. 440) I avoided this unnecessary effort to foreclose all situations in which the President might have legitimate need to use troops. I am happy that House Joint Resolution 432 also avoids this possible pitfall.

In this and other respects I feel that House Joint Resolution 432 is reasonable and responsible legislation which would go far toward reasserting the Congress constitutional power in this area. I strongly urge its adoption.

I will reserve further comments on the substance of the resolution until we reach the amendment stage on the bill. Mr. BURCH of Florida, Madam Chairman, I must rise in opposition to the passage of House Joint Resolution 432, the war powers resolution of 1973, because I honestly feel that it is a mistake to give the White House what could become a blank check. To that use shall be for the exercise of the powers of Congress and the President, and this bill grants the Presidents to employ armed forces to deploy or to engage in hostilities, and (c) of House Joint Resolution 432 became apparent very early in our national history, and (c) of House Joint Resolution 432 which states:

As provided by section 5 of House Joint Resolution 432 which contains the word "war," I wish to emphasize that the Congress, not just the other body, has a constitutional power to declare war, and as such a power is not only constitutionally granted powers, but something that the joint resolutions of Congress are constructed to provide that a concurrent resolution shall have the force of law, but what we are likely to do is to stipulate the door into fragments so that passage either through the door is dangerous and the control of the hote is impossible. Constitutional powers should not be tampered with lightly. Our system of government has worked well for almost 200 years, and I honestly feel that history will reflect that the action being contemplated by the House today, would work to the detriment of our system of government and against the best interests of the American people in the future.

Specifically, section 4 (b) and (c) of House Joint Resolution 432 are in my opinion against the best interests of the United States, Section 4(b) provides that the President at the end of 120 days, without regard even to the immediate safety of our Armed Forces, must terminate any involvement of U.S. Forces in hostilities outside the United States, and withdraw newly dispatched combat forces from the area of any foreign country unless the Congress by that time has declared a declaration of war or specifically authorized the use of our Armed Forces. Section 4(c) provides that hostilities and deployments may be terminated by Congress alone at any time within the 120-day period, by means of a concurrent resolution having no force of law. As a practical matter we all know that the Congress does not always move as quickly as it should and a legislative deadlock might develop thereby making it necessary to withdraw troops already committed to combat after 120 days. My position is that the only proper way to conduct military actions, or for that matter, government. It is highly undesirable for Congress through the process of delegation to be able to determine whether a course of Presidential action should be continued.

Under present law, if the Commander in Chief orders our forces to deploy or to engage in hostile, Congress has no such action if it wishes, by use of constitutionally granted powers. But nothing to provide that a concurrent resolution shall have the force of law, we are embarking on an extremely dangerous and probably unconstitutional course of action.

Decisions of war and peace by the United States should not be developed by confrontation between the Congress and the Executive, but rather it should be developed by a maximum amount of cooperation between the two branches. I therefore urge that you recognize that this is bad legislation before us today and it should be defeated. It is my opinion that the constitutional authorities presently in existence are sufficient allocations of the war powers between Congress and the executive branch.

Mr. HOLIFIELD. Madam Chairman, I tend to vote for passage of the war powers resolution of 1973, and I commend the Committee on Foreign Affairs for once again bringing this important subject before us.

In my view, the war powers resolution does not represent a prudent or responsible course of action.

First, it helps to fill a long existing constitutional void.

Second, it more clearly defines the war-making powers of the President and guarantees the participation of the Congress in the foreign policy of this country—specially where that policy is enforced by the use of military power.

I want to emphasize that the Congress, not just the other body, has a constitutional role in foreign policy. This House has too long refused to assert its powers and has, too often, confined its foreign policy role to the appropriations process.

As written, our Federal Constitution is silent in numerous instances with respect to the exercise of congressional, judicial and Presidential powers. Those who drafted the Constitution could not possibly have foreseen the growth of a technological society, or the great complexities of our foreign relations in a nuclear age. During crisis after crisis we have been left floundering in a thickets of "inherent powers," "as届时 powers," "first line of defense," "interests," and "claims of usurpa- tion of the powers of the President by that of the Congress through its constitutional or statutory guidance.

For example, the hearings of the Foreign Affairs Committee on the war powers resolution list 189 instances where the United States has engaged in mill-
The preservation of representative government involves all facets of our national life:

- The preservation of the Congress and the President, who are the representatives of the will of the people;
- The preservation of the rule of law as the rule of men.

In conclusion, I want to say that I have not cast to inhibit any President or future Congress in the exercise of our own national interest. If I believed that this resolution would do so, I would not support it.

This resolution will not inhibit the Congress, or the President. It merely assu­res that we, the elected representatives of the people, will help decide whether future foreign military operations are in fact to the national interest.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

RESOLVED by the Senate and House of Represent­atives of the United States of America in Congress assembled, That it is the sense of Congress that it is desirable to control the prices of eggs and chickens, and that the President has a duty to exercise his constitutional function of taking care that the laws be faithfully executed by making the necessary executive orders.

The resolution before us is not addressed to any particular war or military action. It does not criticize, nor is it merely as­sertive. The President's flexibility in dealing with any future international crisis is the thing that this resolution will do:

- It assures that the Congress—inc­luding the House at long last—will be fully consulted and will decide whether to commit the lives of those we represent to a foreign conflict.
- Also, the Congress will be provided, at long last, with sufficient information to permit it to intelligently exercise its con­stitutional duties and prerogatives in these situations.

Most importantly, passage of this resolu­tion will apply the rule of law to these future Presidential actions in the foreign policy area.

The 43 California Members of this House represent more than 10 percent of the young people who would be called upon to fight an undeclared war. Our constitu­ents would be called upon to pay a high share of the costs of such a war. And the costs are more than of our constituents would be buried in the course of any such war.

For no other reasons than these, Calif­ornia's people are entitled to their voice in these matters through their elected representatives.

But there are better reasons for supporting the war powers resolution. These are:

- The defense of our national economic interests;
- The defense of the national security.

CONGRESSIONAL RECORD—HOUSE

June 25, 1973

Poultry Crisis

Mr. KAZEN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.

Mr. KAZEN. Mr. Speaker, I rise to call attention to a crisis facing poultry growers and processors in my south Texas district, and to warn that their problem stems from one end of the country to the other. I was in my district over the weekend, and I talked to poultrymen who are downsizing and culling young chickens because they see no way to recover the money it would cost to feed them. They are destroying eggs because they cannot expect to provide fryers and broilers to the Nation's markets at a break-even point, let alone gaining a reasonable return for their labor and investment.

There is a strong possibility that chickens and eggs will disappear from the retail markets of the Nation. Every one of us knows that the family budget is strained these days. With some reluctance, we have recognized the need for controls. But the goal is to stop the rise in the cost of living, not to eliminate our own source of protein in our daily diets.

I have communicated my concern to the President. I have told him that the June 1 to 8 have period for price controls is striking the poultry industry with burning. It cannot sustain. In that period, retailers were pushing chickens in their stores as "lose leaders," but they cannot continue these losses, as the large-scale control orders to the poultrymen at a time when feed and ingredient prices are the highest in history.

I have urged the President, for action, by Executive order which will save the poultry industry and protect the family food shoppers of the country.

I shall counsel with other Members from districts where poultry production and processing is important to the econ­omy, but I also call on every Member of the House to become concerned in this problem because it is one that vitally affects the entire Nation. An adjustment of price controls is essential if we are going to continue to have poultry and eggs in our retail stores and on our dinner tables.

IMPOUNDMENT LEGISLATION REPORTED BY RULES COMMITTEE

Mr. MADDEN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.

Mr. MADDEN. Mr. Speaker, on last Thursday, June 23, the Rules Committee reported H.R. 8486, the impoundment control bill to the floor of the House which will be considered by the mem­bership after the Fourth of July recess. This legislation, it is my understanding, will require the President to notify the Congress and to secure his funding in the law, to provide a procedure under which the House or the Senate may disapprove the President's action and require him to cease such im­poundment and to establish for the fiscal year 1974 a ceiling on total Federal expendi­ture.

The Rules Committee held nine pub­lic hearings and took testimony from many Members of Congress, Government departments, and also from Senator Sam J. Ervin, Jr., who is the sponsor of an impoundment bill reported by the Senate some weeks ago.

Members of the House and Senate have been receiving many complaints regarding the im­poundment of funds on legislation and various programs enacted into law by the Congress during the last dozen years. I know the Members of Congress when they return home over the Fourth of July recess will receive plenty of protest from the public and various organizations on the curtailment and in some cases complete obliteration of legislative projects enacted into law by the Congress. The curtailments and im­poundments have also halted or greatly reduced urban renewal projects, houses­hip and capital programs passed by the Congress.

In order, I seek unanimous consent to include with my remarks excerpts from the New York Times of yesterday, Sunday, June 24, 1973, setting out the situation in New York, New Jersey, and Connecticut, where the withholding of funds has caused the closure of vital projects.

l have some of these articles as reprinted in the Hearings on the impoundment bills and the articles are similar to what is taking place all over the Nation, especially in urban centers.
Joint Resolution

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

In the name of the United States of America, in Congress assembled, that:

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

Section 2. The President, in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Section 3. The President shall report to the Congress in writing every 60 days:

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

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

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

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

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;
TEXTS OF LEGISLATIVE PROHIBITIONS AGAINST REINTRODUCTION OF
U.S. MILITARY FORCES INTO INDOCHINA

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

Sec. 207. 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 here-
tofore 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 hereafter 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)

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 93-155)

§1107 Notwithstanding any other provision of law, upon enact-
ment of this Act, no funds heretofore or hereafter ap-
propriated 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 Viet-
ham, Laos, or Cambodia, unless specifically authorized
hereafter, by the Congress.

Foreign 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 opera-
tions by the United States in or over Vietnam, Laos, or Cambodia.