

A PROPOSED COMBAT AUTHORIZATION ACT

THE WAR POWERS RESOLUTION

SHORT TITLE

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

PURPOSE AND POLICY

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

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

(c) The constitutional powers 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.

THE COMBAT AUTHORIZATION ACT
(*proposed*)

SHORT TITLE

Section 1. This Act may be cited as the “Combat Authorization Act.”

PURPOSE AND POLICY

Sec. 2. It is the purpose of this Act to fulfill the purpose of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or situations where there is an imminent danger of hostilities, and to the continued presence of United States forces in such situations.

[*eliminated*]

[*eliminated*]

CONSULTATION

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

REPORTING

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

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

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

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

The President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

CONSULTATION

Sec. 3.(a) Before introducing United States Armed Forces into hostilities or a situation where there is an imminent danger thereof, or retaining them in a location where hostilities or the imminent danger thereof has developed, the President shall in every possible instance consult with the representatives of Congress designated in subsections (b) and (c) of this section, discussing the situation fully and seeking their advice and counsel. So long as such a situation persists he shall consult regularly with said representatives, discussing the situation fully and seeking their advice and counsel.

Secs. 3.(b) and 3.(c) [defining Permanent Consultative Group. Use sections 3.(b) and 3.(c) of “Byrd-Nunn proposal,” S.J. RES. 323, 100th Cong., 2d Sess.]

AUTHORIZATION

Sec. 4.(a) Before introducing United States Armed Forces into hostilities or a situation where there is an imminent danger thereof, or retaining them in a location where hostilities or the imminent danger thereof have developed, the President shall have obtained a declaration of war or specific statutory authorization as provided in section 7 of this act. *Provided, however*, that where a clear threat to the national security has developed so rapidly as to preclude Congress’s advance consideration of such authorization, or keeping the pendency of the United States’s response to such a threat secret prior to its initiation is clearly essential to its military effectiveness, the President may instead, at the latest simultaneously with the introduction of United States Armed Forces, submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a request for congressional authorization accompanied by a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

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

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

(1) the circumstances necessitating the introduction of such forces;

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

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

An imminent danger of hostilities exists, inter alia, whenever there exists a substantial possibility that United States Armed Forces will be attacked, irrespective of any hope that the presence of such forces will deter such attack. Any person employed by, or under contract to, or under the direction of any department or agency of the United States government who is either engaged in hostilities in any foreign country or advising any regular or irregular military forces engaged in hostilities in any foreign country shall be deemed to be a member of the Armed Forces of the United States for purposes of this Act.

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

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

(b) [same as existing 4.(b)]

[eliminated as superfluous in light of proposed 3.(b) and 3.(c)]

CONGRESSIONAL ACTION

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

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

CONGRESSIONAL ACTION;
JUDICIAL REVIEW

Sec. 5.(a) [same as existing section 5.(a), substituting "4(a)" for "4(a)(1)"]

(b) Any member of the United States Armed Forces ordered to the relevant theatre of operations, or any Member of Congress, may bring an action in the United States District Court for the District of Columbia to enforce section 4(a) of this Act in the event the President has not complied therewith. Such action shall not be dismissed by the court on the ground that the plaintiff lacks standing, the case presents a political question, the case is unripe, or as an exercise of the court's equitable discretion. In the event the court finds that section 4(a) has not been complied with, it shall enter a declaratory judgment to that effect. A decision either entering or declining to enter such a judgment shall be directly appealable to the United States Supreme Court.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

(c) Within twenty calendar days after a request for authorization is submitted by the President under section 4(a) or a judgment declaring that section 4(a) has not been complied with is entered under section 5(b), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted or judgment entered, unless the Congress has declared war or has enacted a specific authorization for such use of United States Armed Forces, or is physically unable to meet as a result of an armed attack upon the United States. Where Congress is able to consider and vote on a declaration of war or specific authorization in fewer than twenty days after said report or judgment, it shall do so.

CONGRESSIONAL PRIORITY
PROCEDURES FOR JOINT
RESOLUTION OR BILL

Sec. 6. [not reprinted]

CONGRESSIONAL PRIORITY
PROCEDURES FOR JOINT
RESOLUTION OR BILL

*[existing provisions to be replicated,
as adjusted for twenty-day clock]*

CONGRESSIONAL PRIORITY
PROCEDURES FOR
CONCURRENT RESOLUTION

Sec. 7. [not reprinted]

*[eliminated in light of elimination of
existing section 5.(c)]*

INTERPRETATION OF
JOINT RESOLUTION

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

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution) including any provision contained in any appropriation Act,

INTERPRETATION OF
THIS ACT

Sec. 7.(a) Authority to introduce United States Armed Forces into hostilities or into situations where there is an imminent danger of hostilities, or to retain them in a situation where hostilities or the imminent danger thereof has developed, shall not be inferred—

(1) from any provision of law, including any provision contained in any appropriation Act, unless such provision specifically authorizes such introduction or retention and states

unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

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

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

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

(d) Nothing in this joint resolution—

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

that it is intended to constitute specific statutory authorization within the meaning of this Act; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing such introduction or retention, and stating that it is intended to constitute specific statutory authorization within the meaning of this Act.

(b) [same as existing section 8.(b), substituting "Act" for "joint resolution"]

(c) [same as existing section 8.(c), substituting "Act" for "joint resolution"]

[*eliminated*]

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

SEPARABILITY CLAUSE

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

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TERMINATION OF FUNDING

Sec. 8. No funds appropriated or otherwise made available under any law may be obligated or expended for any activity which would have the purpose or effect of violating any provision of the Act.

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SEPARABILITY CLAUSE

Sec. 9. [same as existing section 9, substituting "Act" for "joint resolution"]