

WAR POWERS RESOLUTION (1973)

This resolution is most significant as an interpretation by Congress of its war powers under the circumstances of U.S. global military leadership and Cold War. Although it seemed that the possibility of formally declaring war prior to or even “constitutionalizing” after the fact of U.S. involvement in military conflict had become obsolete, Congress asserted that it still had the constitutional responsibility to limit and control such involvement. This resolution was vetoed by President Richard Nixon on constitutional grounds, but his veto was overridden. No president since Nixon has accepted the constitutional interpretation it sets forth.

Section 1541 (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 hereof.

(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 1542. . . 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 1543 . . . (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation, the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—(A) the circumstances necessitating the introduction of the United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and
(C) the estimated scope and duration of the hostilities or involvement.

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

Section 1544 . . . (b) . . . Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 1543(a) (1) of this title, whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) . . . Notwithstanding subsection (b) of this section, 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. . . .

Section 1547 . . . 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 November 7, 1973), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction 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.