

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATHAN MICHAEL SMITH,)	
Captain, United States Army,)	
ISIS Operation Inherent Resolve,)	
Camp Arifjan, Kuwait)	
)	
<i>Plaintiff,</i>)	Civil Action No.
)	
v.)	COMPLAINT FOR
)	DECLARATORY RELIEF
BARACK H. OBAMA,)	
President of the United States)	
The White House)	
1600 Pennsylvania Avenue, N.W.)	
Washington, D.C. 20500)	
)	
<i>Defendant.</i>)	

NATURE OF THE CASE

Summary

Nathan Michael Smith is a U.S. Army Captain deployed to the Kuwait headquarters of the Combined Joint Task Force-Operation Inherent Resolve, which commands all forces in support of the war against ISIS in Iraq and Syria. Captain Smith seeks a declaration that President Obama's war against ISIS is illegal because Congress has not authorized it. Under the 1973 War Powers Resolution, when the President introduces United States armed forces into hostilities, or into situations where hostilities are imminent, he must either get approval from Congress within sixty days to continue the operation, in the form of a declaration of war or specific statutory authorization, or he must terminate the operation within the thirty days after the sixty-day period has expired.

The President did not get Congress's approval for his war against ISIS in Iraq or Syria within the sixty days, but he also did not terminate the war. The war is therefore illegal. The Court should issue a declaration that the War Powers Resolution requires the President to obtain a declaration of war or specific authorization from Congress within sixty days of the judgment, and that his failure to do so will require the disengagement, within thirty days, of all United States armed forces from the war against ISIS in Iraq and Syria.

Captain Smith suffers legal injury because, to provide support for an illegal war, he must violate his oath to "preserve, protect, and defend the Constitution of the United States." *See Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804) ("A commander of a ship of war of the United States, in obeying his instructions from the President of the United States, acts at his peril. If those instructions are not strictly warranted by law he is answerable in damages to any person injured by their execution."), cited with approval in *Zivotovsky v. Kerry*, 135 S. Ct. 2076, 2090 (2015).

Finally, the Take Care clause required the President to publish a sustained legal justification, within the sixty-day period required by the War Powers Resolution, to enable Captain Smith to determine whether he can reconcile his military actions as an officer with his oath to "preserve, protect, and defend the Constitution of the United States." In contrast to past practice, the President has failed to publish an opinion prepared by the Justice Department's Office of Legal Counsel or the White House Counsel to justify the war against ISIS. He has instead left it to Administration spokespersons to provide ad hoc and ever-shifting legal justifications for a military campaign that is constantly changing its strategic objectives and escalating its use of force. This pattern of lawlessness is inconsistent with the President's obligation to "faithfully execute" the War Powers Resolution.

The 2001 Authorization for Use of Military Force (“2001 AUMF”) does not authorize the war against ISIS. It authorized the President to wage war against those responsible for the attacks of September 11, 2001 – meaning Al Qaeda – and the governments which harbored it – meaning the Taliban. ISIS is in no way responsible for the September 11 attacks. The 2002 Iraq Authorization for Military Force (“2002 Iraq AUMF”) also does not allow the President to wage the war against ISIS in Iraq: the war that Congress authorized the President to wage in Iraq is over. The Resolution does not even purport to cover military actions in Syria. The Administration has stated that it is obsolete, and should no longer be relied on for military action in Iraq, and should be repealed.

Finally, the war exceeds the President’s constitutional authority as “commander-in-chief” under Article II, section 2 of the Constitution. That authority does not override the War Powers Resolution’s requirement that the President must obtain the consent of Congress within the time specified by the Resolution before committing the country to on-going war.

THE PARTIES

1. The plaintiff, U.S. Army Captain Nathan Michael Smith, is deployed to Kuwait as an intelligence officer at Camp Arifjan. He works in the headquarters of the commander of Combined Joint Task Force-Operation Inherent Resolve, who oversees the entire United States and Coalition counter-ISIS campaign in Iraq and Syria. Smith Declaration ¶ 2.

2. The defendant is President Barack Obama, the President of the United States. President Obama purported to authorize Operation Inherent Resolve.

JURISDICTION AND VENUE

3. This case arises under the Constitution and laws of the United States and presents a federal question within this Court’s jurisdiction under Article III of the Constitution and 28

U.S.C. § 1331. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and authority to award costs and attorneys’ fees under 28 U.S.C. § 2412. Venue is proper in this district under 28 U.S.C. § 1391(e).

STATEMENT OF FACTS

I. CAPTAIN SMITH FILED THIS LAWSUIT OUT OF CONSCIENCE BECAUSE FIGHTING AN ILLEGAL WAR FORCES HIM TO VIOLATE HIS OATH TO “PRESERVE, PROTECT, AND DEFEND” THE CONSTITUTION.

4. Captain Smith joined the military in 2010 because he believed that the United States military is a force for good in the world. With the people’s representatives in Congress holding the keys to war and peace, he believed that his service as an officer would carry out the will of his fellow Americans. One of his proudest military assignments was in Afghanistan, where Congress had authorized the President to wage war. Smith Declaration ¶ 3 (attached as Exhibit A).

5. When President Obama ordered airstrikes in Iraq in August 2014, and in Syria in September 2014, Captain Smith was ready for action. He believes that the operation is justified both militarily and morally. He considers ISIS “an army of butchers,” and believes that participation in the campaign against them “is what I signed up to be part of when I joined the military.” Smith Decl. ¶¶ 4, 5.

6. Like his fellow soldiers at Camp Arifjan, Captain Smith closely follows the news. He reports: “while we were all cheering every airstrike and every setback for ISIS, I was also noticing that people at home were torn about whether President Obama should be carrying out this war without proper authorization from Congress. I began to wonder, ‘Is this the Administration’s war, or is it America’s war?’ The Constitution tells us that Congress is supposed to answer that question, but Congress is AWOL.” Smith Decl. ¶ 6.

7. Captain Smith states, “My conscience bothered me. When I was commissioned by the President in May 2010, I took an oath to ‘preserve, protect, and defend’ the Constitution of the United States.’ The Constitution gives Congress the power to declare war, and the War Powers Resolution prohibits the President from waging war without a declaration of war or specific statutory authorization.” Captain Smith asked himself, “How could I honor my oath when I am fighting a war, even a good war, that the Constitution does not allow, or Congress has not approved?” To honor his oath, Captain Smith brought this lawsuit to ask the court “to tell the President that he must get proper authority from Congress, under the War Powers Resolution, to wage the war against ISIS in Iraq and Syria.” Smith Decl. ¶ 7.

II. THE WAR AGAINST ISIS IN IRAQ AND SYRIA IS ILLEGAL BECAUSE CONGRESS HAS NOT DECLARED WAR OR GIVEN THE PRESIDENT SPECIFIC STATUTORY AUTHORIZATION TO FIGHT IT, AS REQUIRED BY THE WAR POWERS RESOLUTION.

8. In waging war against ISIS, President Obama is misusing limited congressional authorizations for the use of military force as a blank check to conduct a war against enemies of his own choosing, without geographical or temporal boundaries. Congress passed the 1973 War Powers Resolution in response to just such presidential overreach in the Vietnam War, and to protect against such abuses of presidential power in the future.

Gulf of Tonkin Resolution

9. On August 2, 1964, two U.S. destroyers stationed in the Gulf of Tonkin in Vietnam reported that they had been fired upon by North Vietnamese forces. On August 7, 1964, Congress passed and the President signed the Gulf of Tonkin Resolution. (The Tonkin Gulf Resolution is attached as Exhibit B.) Specifically directed at “the Communist regime in North Vietnam,” the Resolution authorized the President “to take all necessary measures to repel any armed attack against the forces of the United States to prevent further aggression” and “to take

all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.”

10. Presidents Lyndon B. Johnson and Richard M. Nixon used the Gulf of Tonkin Resolution as a blank check to expand the U.S. “police action” in Vietnam into a general “war against communism” in Indochina. Between March 1969 and May 1970, the United States extended the war to Laos and Thailand and conducted a “secret” campaign of carpet bombing in Cambodia, ostensibly directed against sanctuaries and base areas of the North Vietnam Army and the Vietcong. This “incursion” destabilized the neutral government of Prince Norodom Sihanouk and enabled the rise of the murderous Khmer Rouge.

11. As Presidents Johnson and Nixon expanded the Vietnam War, public opposition mounted. Congress responded by repealing the Tonkin Gulf Resolution in January 1971. The Nixon Administration was unimpressed on the ground that the President, as commander-in-chief, needed *no* congressional authorization for the use of military force. After repeal, President Nixon relied on his purported commander-in-chief power to continue the Vietnam War, unfettered by Congress, to its tragic conclusion in 1973.

1973 War Powers Resolution

12. On November 7, 1973, Congress enacted the War Powers Resolution to prevent such presidential overreaching from recurring, and to protect its own constitutional primacy in deciding whether and when to go to war. (The Resolution is attached as Exhibit C.) Congress declared its policy and purpose as follows:

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

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

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

13. The Resolution provides that when the President introduces United States armed forces into hostilities, or into a situation involving imminent hostilities, he must submit a report to Congress on the matter within 48 hours. He is then obligated to obtain either a declaration of war or “a specific statutory authorization” for his continued use of force within sixty days after he submitted (or was required to submit) his report to Congress. If he fails to gain the consent of the House and Senate, he is obligated to withdraw his military forces within thirty days after the sixty-day period has expired.

14. President Nixon vetoed the Resolution. He asserted that it unconstitutionally terminated “certain of the President's constitutional powers as Commander in Chief of the Armed Forces 60 days after they were invoked.” Congress nevertheless passed the Resolution over his veto.

15. Despite President Nixon’s assertions of unconstitutionality, the Justice Department’s Office of Legal Counsel issued a formal opinion in 1980 stating that the War Powers Resolution is constitutional:

We believe that Congress may, as a general constitutional matter, place a 60-day limit on the use of our armed forces as required by the provisions of § 1544(b) of the Resolution. The Resolution gives the President the flexibility to extend that deadline for up to 30 days in cases of “unavoidable military necessity.” This flexibility is, we believe, sufficient under any scenarios we can hypothesize to

preserve his constitutional function as Commander-in-Chief. The practical effect of the 60-day limit is to shift the burden to the President to convince the Congress of the continuing need for the use of our armed forces abroad. We cannot say that placing that burden on the President unconstitutionally intrudes upon his executive powers.

Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization, 4A

Opinions of the Attorney General 185, 196 (1980). (The Attorney General's Opinion is attached as Exhibit D.) In 2011, Senator Richard Lugar asked Harold Koh, then Legal Adviser of the State Department: "Does this opinion continue to reflect the views of the executive branch with regard to the constitutionality of section 1544(b) of the War Powers Resolution?" Adviser Koh replied: "Yes, the opinion continues to reflect the views of the executive branch." See *Libya and War Powers*, Hearing Before the Sen. Comm. on Foreign Relations, 112th Cong. 53 (2011) (responses of Legal Adviser Harold Koh to questions submitted by Senator Richard G. Lugar).

III. THE PRESIDENT DOES NOT HAVE AUTHORITY TO WAGE THE WAR AGAINST ISIS UNDER THE 2001 AUMF, THE 2002 IRAQ AUMF, OR THE PRESIDENT'S COMMANDER-IN-CHIEF POWER.

16. President Obama introduced United States armed forces into situations involving "imminent hostilities" against ISIS in Iraq on August 8, 2014, <https://www.gpo.gov/fdsys/pkg/DCPD-201400604/pdf/DCPD-201400604.pdf>, and against ISIS in Syria on September 23, 2014, <https://www.gpo.gov/fdsys/pkg/DCPD-201400697/pdf/DCPD-201400697.pdf>.

17. President Obama has continued the use of the armed forces in hostilities in those countries for twenty months without having obtained from Congress either a declaration of war or "a specific statutory authorization" for its use.

18. Having acknowledged the constitutionality of the War Powers Resolution, the President nonetheless failed to publish an opinion from the Office of Legal Counsel or the White House Counsel explaining why his military actions past the ninety-day limit were consistent with

the Resolution. The White House has not even acknowledged that the OLC or the White House Counsel – the institutional arbiters of executive legality – were *asked* to prepare an opinion on this crucial issue. If the President has indeed failed to request their advice, this would represent a sharp break with past practice. It also would bespeak a strikingly cavalier disregard of the president’s duty to “take care that the law be faithfully executed.”

19. It is far more likely that the President sought an opinion but found the reasoning of the OLC or the White House Counsel so unpersuasive that its publication would have discredited his military campaign. In any event, the White House’s failure to publish a serious legal justification for the war opened a vacuum which the Administration has sought to fill with ad hoc and ever-shifting legal justifications. This lawlessness has made it impossible for Captain Smith to determine whether his present mission is inconsistent with his oath to “preserve, protect and defend the Constitution of the United States,” thus requiring him to seek an independent determination of this matter from the Court.

2001 Authorization for Use of Military Force

20. In response to the terrorist attacks of September 11, 2001, President Bush initially requested authority “*to deter and preempt* any future acts of terrorism or aggression against the United States.” (Emphasis added.) See David Abramovitz, “The President, the Congress and the Use of Force,” 43 *Harv. Intl. L. J.* 71, 73 (2002) (emphasis added) (Chief Counsel, House Committee on International Relations, House of Representatives, reporting on initial White House proposal.) But Congress refused to grant such authority precisely because it wanted to force future Presidents to return for specific authorization of further military initiatives. As Senator McCain put it, “the question is how do you fashion the language so that we don’t have another ““Tonkin Gulf Resolution.”” Associated Press, “Senate OKs \$40 Billion in Aid, Use of

Force” (Sept. 14, 2001). To answer that question, Congress passed and the President signed a much more limited Authorization for Use of Military Force (“2001 AUMF”) (attached as Exhibit E).

21. The 2001 AUMF was directed at Al Qaeda, which “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001,” and at the Taliban, which “harbored” such organizations or persons. The 2001 AUMF’s purpose was “to prevent any future acts of international terrorism against the United States by *such* nations, organizations or persons.” (Emphasis added.) Congress specified that nothing in the Resolution “supercedes [sic] any requirement of the War Powers Resolution.” President Obama’s interpretation of the 2001 AUMF effectively converts it into the open-ended resolution that Congress deliberately rejected.

2002 Iraq Authorization for Use of Military Force

22. On October 16, 2002, President Bush signed into law the Authorization for Use of Military Force Resolution of 2002 (“2002 Iraq Resolution”) (attached as Exhibit F). The Resolution granted the President specific authorization

to use the Armed Forces of the United States to to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

(1) defend the national security of the United States against the continuing threat posed by Iraq; and

(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

On July 25, 2014, the Administration declared to Congress that, “[w]ith American combat troops having completed their withdrawal from Iraq on December 18, 2011, the Iraq AUMF is no longer used for any U.S. government activities.” Letter from Susan Rice, National Security Advisor, to Congress, July 25, 2014. (The letter is attached as Exhibit G.) Yet in the following

months, the Administration proceeded to invoke this Authorization to justify its war against ISIS, despite the fact that the 2002 AUMF explicitly provided that it did not “supersede[] any requirement of the War Powers Resolution.”

23. Under Article II, section 2 of the Constitution, the President is “Commander in Chief of the Army and Navy of the United States.” The President’s commander-in-chief power, however, does not authorize him to initiate hostilities without a declaration of war or specific statutory authorization. President Obama is fighting a war against ISIS without a declaration of war or specific statutory authorization.

CONSTITUTIONAL AND STATUTORY VIOLATIONS

COUNT I

(War Powers Resolution)

24. The War Powers Resolution provides that sixty days after the President has introduced United States armed forces into hostilities or into situations involving imminent hostilities, the President must obtain from Congress either a declaration of war or “a specific statutory authorization” for his use of force. If he fails to gain Congressional consent, the Resolution requires the President to withdraw the armed forces within thirty days.

25. President Obama introduced United States armed forces into situations involving “imminent hostilities” against ISIS in Iraq on August 8, 2014, and against ISIS in Syria on September 23, 2014. He has continued the use of United States armed forces in hostilities for twenty months without obtaining from Congress either a declaration of war or “a specific statutory authorization.”

26. Wherefore, the President has violated the War Powers Resolution.

COUNT II
(Take Care Clause)

27. Article II, Section 3, clause 5 of the Constitution commands that the President “shall take Care that the Laws be faithfully executed.”

28. The Take Care clause required President Obama to publish, within the sixty-day period specified by the War Powers Resolution, a sustained legal justification to enable Captain Smith to determine whether his military actions as an officer are consistent with his oath to “preserve, protect, and protect the Constitution of the United States.”

29. The President failed to publish such a sustained legal justification.

30. Wherefore, the President has violated the Take Care clause of the Constitution.

ACTIONS TAKEN IN EXCESS OF PRESIDENT’S AUTHORITY

COUNT III
(2001 AUMF)

31. The 2001 AUMF authorized the President to wage war against those responsible for the attacks of September 11, 2001 and the governments which harbored it.

32. ISIS is in no way responsible for the September 11 attacks.

33. Wherefore, in exercising military force against ISIS, the President has exceeded his authority under the 2001 AUMF.

COUNT IV
(2002 IRAQ AUMF)

34. The 2002 Iraq AUMF authorized the President to use military force to “defend the national security of the United States against the continuing threat posed by Iraq.”

35. The President’s war against ISIS is not a use of military force to “defend the national security of the United States against [a] continuing threat posed by Iraq.”

36. Moreover, the 2002 Iraq AUMF ceased to have effect when American combat troops completed their withdrawal from Iraq on December 18, 2011.

37. Wherefore, in exercising military force against ISIS after December 18, 2011, the President exceeded his authority under the 2002 Iraq AUMF.

COUNT V
(Commander-in-Chief)

38. Under Article II, section 2 of the Constitution, the President is “Commander in Chief of the Army and Navy of the United States.”

39. The President’s commander-in-chief power does not override his obligation under the War Powers Resolution to obtain from Congress a declaration of war or specific statutory authorization in order to wage the war against ISIS.

40. President Obama is fighting a war against ISIS without a declaration of war or specific statutory authorization.

41. Wherefore, the President’s war against ISIS exceeds his authority as commander-in-chief.

PRAYER FOR RELIEF

Captain Smith respectfully requests that the court declare that the war against ISIS in Syria and Iraq violates the War Powers Resolution because the Congress has not declared war or given the President specific statutory authorization to fight the war, and violates the Take Care clause, and that if Congress does not declare war or give the President specific statutory authorization within sixty days of the judgment, the War Powers Resolution will require the disengagement, within thirty days, of all United States armed forces from the war against ISIS in

Iraq and Syria. Captain Smith also respectfully requests that the court award costs and attorneys' fees to Captain Smith's counsel under 28 U.S.C. § 2412.

Respectfully submitted,

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EXHIBIT A

DECLARATION OF NATHAN MICHAEL SMITH

1. My name is Nathan Michael Smith. I am a captain in the U.S. Army on active duty. I am 28 years old. I come from a three-generation family of military officers. My grandfather and father were Naval aviators. My mother was in Naval Intelligence. My sister was a Naval surface warfare officer.

2. I am deployed to Kuwait as an intelligence officer at Camp Arifjan. I work in the headquarters of the commander of Combined Joint Task Force-Operation Inherent Resolve, who oversees the entire United States and Coalition counter-ISIS campaign in Iraq and Syria.

3. I joined the military in 2010 because I believed that the United States military is a force for good in the world. With the people's representatives in Congress holding the keys to war and peace, I would be carrying out the will of my fellow Americans. I am proud that one of my assignments was in Afghanistan, where Congress authorized the President to wage war.


4. Like everyone else, I was taken aback when I saw ISIS sweep through Syria and Iraq, seizing city after city, town after town, with their beheadings and crucifixions, laying to waste all in their way. They are an army of butchers. Their savagery is sickening.

5. When President Obama ordered airstrikes in Iraq in August 2014, and in Syria in September 2014, I was ready for action. In my opinion, the operation is justified both militarily and morally. This is what I signed up to be part of when I joined the military.

6. We at Camp Arifjan closely follow the news about our operation. But while we were all cheering every airstrike and every setback for ISIS, I was also noticing that people at home were torn about whether President Obama should be carrying out this war without proper authorization from Congress. I began to wonder, "Is this the Administration's war, or is it America's war?" The Constitution tells us that Congress is supposed to answer that question, but Congress is AWOL.

7. My conscience bothered me. When I was commissioned by the President in May 2010, I took an oath to “preserve, protect, and defend the Constitution of the United States.” The Constitution gives Congress the power to declare war, and the War Powers Resolution prohibits the President from waging war without a declaration of war or specific statutory authorization. How could I honor my oath when I am fighting a war, even a good war, that the Constitution does not allow, or Congress has not approved? To honor my oath, I am asking the court to tell the President that he must get proper authority from Congress, under the War Powers Resolution, to wage the war against ISIS in Iraq and Syria.

8. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, reading "Nathan Michael Smith".

NATHAN MICHAEL SMITH
United States Army Captain

May 2, 2016

EXHIBIT B

Public Law 88-408

JOINT RESOLUTION

August 10, 1964
[H. J. Res. 1145]

To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Approved August 10, 1964.

Public Law 88-409

AN ACT

August 10, 1964
[H. R. 8654]

To terminate a restriction on use with respect to certain land previously conveyed to the city of Fairbanks, Alaska, and to convey to said city the mineral rights in such land.

Fairbanks,
Alaska.
Conveyance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the restriction on use for other than school purposes and the reservation of mineral rights with respect to lot 1, block 115, in the city of Fairbanks, Alaska, under the provisions of the Act entitled "An Act to transfer lot 1 in block 115, city of Fairbanks, Alaska, to the city of Fairbanks, Alaska", approved June 1, 1948 (62 Stat. 283), are hereby respectively terminated and conveyed to said city.

Approved August 10, 1964.

EXHIBIT C

87 STAT.] PUBLIC LAW 93-148—NOV. 7, 1973

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(b) The table of sections for chapter 33 of title 18 of the United States Code is amended by striking out of the item designated

"712. Misuse of names by collecting agencies to indicate Federal agency."

and inserting in lieu thereof

"712. Misuse of names, words, emblems, or insignia."

Approved November 3, 1973.

Public Law 93-148

JOINT RESOLUTION

Concerning the war powers of Congress and the President.

November 7, 1973
[H. J. Res. 542]

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

War Powers
Resolution.

SHORT TITLE

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

PURPOSE AND POLICY

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

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

USC prec.
title 1.

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

CONSULTATION

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

REPORTING

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

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

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

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

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

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

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

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

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

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

CONGRESSIONAL ACTION

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

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

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of

war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

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

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

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

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

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

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

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

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

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

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

INTERPRETATION OF JOINT RESOLUTION

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

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

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

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

59 Stat. 1031.

"Introduction
of United States
Armed Forces."

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

(d) Nothing in this joint resolution—

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

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

87 STAT.]

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SEPARABILITY CLAUSE

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

EFFECTIVE DATE

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

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 7, 1973.

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

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

Attest:

W. PAT JENNINGS

Clerk.

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

W. PAT JENNINGS

Clerk.

IN THE SENATE OF THE UNITED STATES

November 7, 1973.

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

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

Attest:

FRANCIS R. VALEO
Secretary.

Public Law 93-149

November 7, 1973
[H. R. 5943]

AN ACT

To amend the law authorizing the President to extend certain privileges to representatives of member states on the Council of the Organization of American States.

Council of the
Organization of
American States.
Diplomatic
privileges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 10, 1952 (66 Stat. 516, 22 U.S.C. 288g), is amended as follows:

(a) The title of the Act is amended to read as follows:

"An Act to extend certain privileges to the representatives of member states and permanent observers to the Organization of American States."

(b) The body of the Act is amended to read as follows:

"That, under such terms and conditions as he shall determine, the President is hereby authorized to extend, or to enter into an agreement extending, to the representatives of member states (other than the United States) to the Organization of American States and to permanent observers to the Organization of American States, and to members of the staffs of said representatives and permanent observers, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States."

Approved November 7, 1973.

Public Law 93-150

November 7, 1973
[H. R. 9639]

AN ACT

To amend the National School Lunch and Child Nutrition Acts for the purpose of providing additional Federal financial assistance to the school lunch and school breakfast programs.

National School
Lunch and Child
Nutrition Act
Amendments of
1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National School Lunch and Child Nutrition Act Amendments of 1973".

REIMBURSEMENT

86 Stat. 726.
42 USC 1753.

SEC. 2. (a) Section 4 of the National School Lunch Act is amended to delete the phrase "8 cents per lunch" as it appears in said section and substitute the phrase "10 cents per lunch".

60 Stat. 232;
86 Stat. 729.
42 USC 1757.

(b) Section 8 of the National School Lunch Act is amended by inserting before the last sentence thereof the following new sentence: "In any fiscal year in which the national average payment per lunch determined under section 4 is increased above the amount prescribed in the previous fiscal year, the maximum Federal food-cost contribution rate, for the type of lunch served, shall be increased by a like amount."

EXHIBIT D

OPINIONS
OF THE
OFFICE OF LEGAL COUNSEL
OF THE
UNITED STATES DEPARTMENT OF JUSTICE
CONSISTING OF SELECTED MEMORANDUM OPINIONS
ADVISING THE
PRESIDENT OF THE UNITED STATES
THE ATTORNEY GENERAL
AND OTHER EXECUTIVE OFFICERS OF THE FEDERAL GOVERNMENT
IN RELATION TO
THEIR OFFICIAL DUTIES

EDITOR
Margaret Colgate Love

VOLUME 4A

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WASHINGTON
1983

Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization

The President's inherent, constitutional authority as Commander-in-Chief, his broad foreign policy powers, and his duty to take care that the laws be faithfully executed generally empower him to deploy the armed forces abroad without a declaration of war by Congress or other congressional authorization. A historical pattern of presidential initiative and congressional acquiescence in emergency situations calling for immediate action, including situations involving rescue and retaliation, confirm this inherent power, and the courts have generally declined to review its use.

The War Powers Resolution generally precludes presidential reliance on statutory authority for military actions clearly involving hostilities, unless a statute expressly authorizes such actions, and regulates the President's use of his constitutional powers in this regard. In particular, it introduces consultation and reporting requirements in connection with any use of the armed forces, and requires the termination of such use within 60 days or whenever Congress so directs.

The term "United States Armed Forces" in the War Powers Resolution does not include military personnel detailed to and under the control of the Central Intelligence Agency. [In an opinion issued on October 26, 1983, published as an appendix to this opinion, this conclusion is reconsidered and reversed.]

The term "hostilities" in the War Powers Resolution does not include sporadic military or paramilitary attacks on our armed forces stationed abroad; furthermore, its applicability requires an active decision to place forces in a hostile situation rather than their simply acting in self-defense.

The requirement of consultation in the War Powers Resolution is not on its face unconstitutional, though it may, if strictly construed, raise constitutional questions.

The provision in the War Powers Resolution permitting Congress to require removal of our armed forces in particular cases by passage of a concurrent resolution not presented to the President is a *prima facie* violation of Article I, § 7 of the Constitution.

February 12, 1980

MEMORANDUM OPINION FOR THE ATTORNEY GENERAL

This responds to your request for our review of certain questions regarding the effect of the War Powers Resolution on the President's power to use military force without special congressional authorization and related issues. We have considered the President's existing power to employ the armed forces in any of three distinct kinds of operations: (1) deployment abroad at some risk of engagement—for example, the current presence of the fleet in the Persian Gulf region; (2) a military expedition to rescue the hostages or to retaliate against Iran if the hostages are harmed; (3) an attempt to repel an assault that

threatens our vital interests in that region. We believe that the President has constitutional authority to order all of the foregoing operations.

We also conclude that the War Powers Resolution, 50 U.S.C. §§ 1541–1548, has neither the purpose nor the effect of modifying the President's power in this regard. The Resolution does, however, impose procedural requirements of consultation and reporting on certain presidential actions, which we summarize. The Resolution also provides for the termination of the use of the armed forces in hostilities within 60 days or sooner if directed by a concurrent resolution of Congress. We believe that Congress may terminate presidentially initiated hostilities through the enactment of legislation, but that it cannot do so by means of a legislative veto device such as a concurrent resolution.

I. The President's Constitutional Authority to Employ the Armed Forces

The centrally relevant constitutional provisions are Article II, § 2, which declares that “the President shall be Commander in Chief of the Army and Navy of the United States,” and Article I, § 8, which grants Congress the power “To declare War.” Early in our constitutional history, it perhaps could have been successfully argued that the Framers intended to confine the President to directing the military forces in wars declared by Congress.¹ Even then, however, it was clear that the Framers contemplated that the President might use force to repel sudden invasions or rebellions without first seeking congressional approval.²

In addition to the Commander-in-Chief Clause, the President's broad foreign policy powers support deployment of the armed forces abroad.³ The President also derives authority from his duty to “take Care that the Laws be faithfully executed,”⁴ for both treaties and customary international law are part of our law and Presidents have repeatedly asserted authority to enforce our international obligations⁵ even when Congress has not enacted implementing legislation.

¹ Hamilton, in *The Federalist* No. 69, disparaged the President's power as that of “first General and Admiral” of the Nation, contrasting it to that of the British king, who could declare war and raise and regulate armies.

² See M. Farrand, 2 *The Records of the Federal Convention of 1787*, 318–19 (1911). Other presidential actions, such as protecting American lives and property abroad and defending our allies, were not directly considered by the Framers. This is understandable: the military needs of the 18th century probably did not require constitutional authority for immediate presidential action in case of an attack on an ally.

³ See generally *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

⁴ See *In re Neagle*, 135 U.S. 1 (1890) (broad view of inherent presidential power to enforce constitutional as well as statutory provisions).

⁵ It should be observed, however, that treaties may not modify the basic allocation of powers in our constitutional scheme. *Reid v. Covert*, 354 U.S. 1 (1957). Mutual defense treaties are generally not self-executing regarding the internal processes of the signatory powers. Similarly, customary international law, which includes authority for reasonable reprisals in response to another country's breach of international obligation, probably does not confer authority on the President beyond the warrant of necessity.

We believe that the substantive constitutional limits on the exercise of these inherent powers by the President are, at any particular time, a function of historical practice and the political relationship between the President and Congress. Our history is replete with instances of presidential uses of military force abroad in the absence of prior congressional approval. This pattern of presidential initiative and congressional acquiescence may be said to reflect the implicit advantage held by the executive over the legislature under our constitutional scheme in situations calling for immediate action. Thus, constitutional practice over two centuries, supported by the nature of the functions exercised and by the few legal benchmarks that exist, evidences the existence of broad constitutional power.⁶

The power to deploy troops abroad without the initiation of hostilities is the most clearly established exercise of the President's general power as a matter of historical practice. Examples of such actions in the past include the use of the Navy to "open up" Japan, and President Johnson's introduction of the armed forces into the Dominican Republic in 1965 to forestall revolution.

Operations of rescue and retaliation have also been ordered by the President without congressional authorization even when they involved hostilities. Presidents have repeatedly employed troops abroad in defense of American lives and property. A famous early example is President Jefferson's use of the Navy to suppress the Barbary pirates. Other instances abound, including protection of American citizens in China during the Boxer Rebellion in 1900, and the use of troops in 1916 to pursue Pancho Villa across the Mexican border. Recent examples include the Danang sealift during the collapse of Vietnam's defenses (1975); the evacuation of Phnom Penh (Cambodia, 1975); the evacuation of Saigon (1975); the *Mayaguez* incident (1975); evacuation of civilians during the civil war in Lebanon (1976); and the dispatch of forces to aid American victims in Guyana (1978).

This history reveals that purposes of protecting American lives and property and *retaliating* against those causing injury to them are often intertwined. In *Durand v. Hollins*, 8 F. Cas. 111 (No. 4186) (C.C.S.D.N.Y. 1860), the court upheld the legality of the bombardment of a Nicaraguan town which was ordered because the local authorities refused to pay reparations for an attack by a mob on the United States Consul. Policies of deterrence seem to have eroded any clear distinction between cases of rescue and retaliation.

Thus, there is much historical support for the power of the President to deploy troops without initiating hostilities and to direct rescue and retaliation operations even where hostilities are a certainty. There is

⁶In other contexts, the Supreme Court has recognized the validity of longstanding presidential practices never expressly authorized by Congress but arguably ratified by its silence. See *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915) (withdrawal of public lands from private acquisition).

precedent as well for the commitment of United States armed forces, without prior congressional approval or declaration of war, to aid an ally in repelling an armed invasion, in President Truman's response to the North Korean invasion of South Korea.⁷ But clearly such a response cannot be sustained over time without the acquiescence, indeed the approval, of Congress, for it is Congress that must appropriate the money to fight a war or a police action. While Presidents have exercised their authority to introduce troops into Korea and Vietnam⁸ without prior congressional authorization, those troops remained only with the approval of Congress.

II. Judicial Review of the President's Exercise of Constitutional Power

In the only major case dealing with the role of the courts with regard to this general subject, the Supreme Court upheld presidential power to act in an emergency without prior congressional authority. In the *Prize Cases*, 67 U.S. 635 (1863), the Court upheld President Lincoln's blockade of Southern ports following the attack on Fort Sumter. The Court thought that particular uses of inherent executive power to repel invasion or rebellion were "political questions" not subject to judicial review: "This Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted." (*Id.* at 670). The Court's unwillingness to review the need for presidential action in a particular instance in the *Prize Cases* or since has left the field to the President and Congress; much has depended on presidential restraint in responding to provocation, and on congressional willingness to support his initiatives by raising and funding armies.

More recently, the courts have applied the rationale of the *Prize Cases* to avoid judicial review of the constitutionality of the President's actions with regard to the Vietnam conflict.⁹ Although the Supreme Court did not hear argument in the case, we believe some significance may be attached to the Court's summary affirmance of a three-judge court's decision that the constitutionality of the government's involvement in that conflict was a political question and thus unsuitable for judicial resolution. *Atlee v. Laird*, 347 F. Supp. 689 (E.D.Pa. 1972), *aff'd*, 411 U.S. 911 (1973).

⁷ Although support for this introduction of our armed forces into a "hot" war could be found in the U.N. Charter and a Security Council resolution, the fact remains that this commitment of substantial forces occurred without congressional approval.

⁸ The substantial American military presence in Vietnam before the Tonkin Gulf Resolution was known to and supported by Congress.

⁹ See, e.g., *Mora v. McNamara*, 387 F.2d 862 (D.C. Cir.), cert. denied 389 U.S. 934 (1967); *McArthur v. Clifford*, 393 U.S. 1002 (1968); *Massachusetts v. Laird*, 400 U.S. 886 (1970).

III. The President's Statutory Powers

Congress has restricted the President's ability to rely on statutory authority for the use of armed force abroad by its provision in the War Powers Resolution that authority to introduce the armed forces into hostilities or into situations "wherein involvement in hostilities is clearly indicated by the circumstances" is not to be inferred from any statutory provision not specifically authorizing the use of troops and referring to the War Powers Resolution. 50 U.S.C. § 1547. Thus, the President may not rely on statutory authority for military actions clearly involving hostilities unless the statute expressly authorizes such actions.

Nevertheless, it may be possible for the President to draw authority for some actions not involving the use of the armed forces in actual or imminent hostilities from the provisions of an 1868 statute, now 22 U.S.C. § 1732:

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

We are unaware of any instances in which this provision has been invoked. It was passed in response to a dispute with Great Britain after the Civil War, in which that nation was trying its former subjects, who had become naturalized Americans, for treason. The House version of the bill, which would have authorized the President to suspend all commerce with the offending nation and to round up its citizens found in this country as hostages, was replaced by the present language which was in the Senate bill. Cong. Globe, 40th Cong., 2d Sess. 4205, 4445-46 (1868). It is not clear whether this change was meant to restrict the President to measures less drastic than those specified in the House bill. It is also not clear what Congress meant by the phrase "not amounting to acts of war." At least Congress did not seem to be attempting to limit the President's constitutional powers.

IV. The War Powers Resolution

The War Powers Resolution, 50 U.S.C. §§ 1541–48, begins with a statement of purpose and policy that seems designed to limit presidential use of armed forces in hostilities to situations involving a declaration of war, specific statutory authorization, or an attack on the United States, its possessions, or its armed forces. This policy statement, however, is not to be viewed as limiting presidential action in any substantive manner. That much is clear from the conference report, which states that subsequent portions of the Resolution are not dependent on the policy statement,¹⁰ and from its construction by the President since its enactment.

The important provisions of the Resolution concern consultation and reporting requirements and termination of the involvement of the armed forces in hostilities. The Resolution requires that the President consult with Congress “in every possible instance” before introducing the armed forces into hostilities, and regularly thereafter. 50 U.S.C. § 1542.

The reporting requirements apply not only when hostilities are taking place or are imminent, but also when armed forces are sent to a foreign country equipped for combat. 50 U.S.C. § 1543(a)(2), (3). The report must be filed within 48 hours from the time that they are introduced into the area triggering the requirement, and not from the time that the decision to dispatch them is made.¹¹ The report must include:

- (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.

50 U.S.C. § 1543(a)(3). Reports which have been filed in the past have been brief and to the point. The reference to legal authority has been one sentence, referring to the President’s constitutional power as Commander-in-Chief and Chief Executive.¹²

¹⁰ See H.R. Rep. No. 547, 93d Cong., 1st Sess. 8 (1973). Section 1547(d)(1) states that the Resolution is not intended to alter the constitutional authority of the President. Fisher, *A Political Context for Legislative Vetoes*, 93 Political Science Quarterly 241, 246 (1978), explains that because the two Houses could not agree on the President’s responsibilities under Article II, Congress fell back on purely procedural controls.

¹¹ See generally Franck, *After the Fall: The New Procedural Framework for Congressional Control over the War Power*, 71 Am. J. Int’l L. 605, 615 (1977).

¹² See *War Powers: A Test of Compliance Relative to the Danang Sealift, the Evacuation of Phnom Penh, the Evacuation of Saigon, and the Mayaguez Incident*, Hearings before the Subcommittee on Int’l Security and Scientific Affairs of the House Comm. on Int’l Relations, 94th Cong., 1st Sess. 75 (Mayaguez) (1975) (hereafter *War Powers: A Test of Compliance*); *The War Powers Resolution. Relevant Documents, Correspondence, Reports*, Subcomm. on Int’l Security and Scientific Affairs, House Comm. on Int’l Relations, 94th Cong., 1st Sess. 40 (Danang); 42 (Phnom Penh); 45 (Mayaguez) (Comm. Print 1976).

The Resolution requires the President to terminate any use of the armed forces in hostilities after 60 days unless Congress has authorized his action.¹³ It also requires termination whenever Congress so directs by concurrent resolution.¹⁴

As enacted, the ambiguous language of the Resolution raises several issues of practical importance regarding the scope of its coverage as well as questions of constitutional magnitude. We shall discuss first several issues related to the scope of its coverage and then discuss several constitutional issues it raises.

A threshold question is whether the Resolution's use of the term "United States Armed Forces" was intended to reach deployment or use by the President of personnel other than members of the Army, Air Force, Marine Corps, Navy, or Coast Guard functioning under the control of the Secretary of Defense and the Joint Chiefs of Staff. For example, does it extend to military personnel detailed to and under the control of the Central Intelligence Agency (CIA), CIA agents themselves, or other individuals contracting to perform services for the CIA or the Department of Defense? We believe that none of these personnel are covered by the Resolution.*

The provision most closely on point is § 1547(c), which defines the term "introduction of United States Armed Forces" to include "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" in actual or imminent hostilities. This provision appears to be intended to identify activities subject to the Resolution, and not the identity of persons constituting "members of such armed forces." It could be argued that anyone officially a member of the armed forces of this country, although on temporary detail to a civilian agency, is within this provision and therefore covered by the Resolution. The legislative history of the Resolution, however, persuades us to take a contrary view. In the Senate, where § 1547(c) originated, Senator Eagleton introduced the following amendment:

Any person employed by, under contract to, or under the direction of any department or agency of the United States Government who is either (a) actively engaged in hostilities in any foreign country; or (b) advising any regular or irregular military forces engaged in hostilities in any foreign country shall be deemed to be a member of

¹³ 50 U.S.C. § 1544(b). There are exceptions to the 60-day period if Congress extends the period or is unable to meet, or if the President certifies that more time is needed to extract the forces.

¹⁴ 50 U.S.C. § 1544(c).

*NOTE: This conclusion respecting the applicability of the War Powers Resolution to military personnel detailed to the Central Intelligence Agency was reconsidered and reversed in an opinion dated October 26, 1983, which appears as an appendix to this opinion at p. 197 *infra*. Ed.

the Armed Forces of the United States for the purposes of this Act.

He explained that it was intended to cover CIA paramilitary operations involving persons who might be military officers under contract to the CIA. 119 Cong. Rec. 25,079-83 (1973). He recognized that without this amendment the Resolution as drafted would not cover the activities of such personnel, and argued that it should, citing CIA activities in Laos as leading to America's Indo-China involvement. Senators Muskie and Javits opposed the amendment, principally for reasons of committee jurisdiction. They argued that if the Resolution were extended to cover the CIA, its chances to escape presidential veto might be jeopardized, and that the matter should be considered pursuant to proposed legislation to govern the CIA. Senator Javits also argued that the amendment was overbroad, since it would include foreign nationals contracting with the CIA. He argued that CIA activities should not be within the Resolution, because the CIA lacks the appreciable armed force that can commit the Nation to war. Senator Fulbright came to Senator Eagleton's defense, arguing that the amendment, applying to the CIA and DOD civilians alike, would avoid circumvention of the Resolution. *Id.* at 25,083-84. No one suggested that the Resolution would apply to anyone other than military personnel under Department of Defense control unless the amendment passed. The amendment was defeated.¹⁵

In the House of Representatives, Congressman Badillo asked Congressman Zablocki, the manager of the bill, whether he would support in the conference committee a Senate provision that would include the CIA within the bill when it carried out military functions. Congressman Zablocki replied that he would support the Eagleton amendment if it passed the Senate. 119 Cong. Rec. 24,697 (1973).

Another provision of the Resolution that had its source in the House is consistent with the view that the Resolution was not intended to apply to CIA paramilitary activities. The reporting requirements of § 1543(a)(2) apply when the armed forces are introduced "into the territory, air space or waters of a foreign nation, while equipped for combat" It is clear from H.R. Rep. No. 287, 93d Cong., 1st Sess. 8 (1973), that this provision was using the term "armed forces" to mean significant bodies of military personnel:

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 Thai-

¹⁵ It is an accepted canon of statutory construction that the rejection of an amendment indicates that the bill is not meant to include the provisions in the failed amendment. *See, e.g., Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 306 (1933).

land in 1962 and the quarantine of Cuba in the same year would have required Presidential reports.

A companion provision reinforces the view that the Resolution applies only to significant bodies of military personnel. The House report goes on to discuss § 1543(a)(3), which requires a report when the number of armed forces equipped for combat is substantially enlarged in a foreign nation. For examples of substantial increases in combat troops, the report gives the dispatch of 25% more troops to an existing station, or President Kennedy's increase in U.S. military advisers in Vietnam from 700 to 16,000 in 1962.

The second threshold question raised by the War Powers Resolution regards the meaning of the word "hostilities" as used in § 1543(a)(1). In the 1975 hearings on executive compliance with the Resolution, Chairman Zablocki of the Subcommittee on International Security and Scientific Affairs drew the Legal Adviser's attention to a discussion of "hostilities" in the House report on the Resolution:

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.

H.R. Rep. No. 287, 93d Cong., 1st Sess. 7 (1973) (emphasis added). Chairman Zablocki then requested the views of the Departments of State and Defense regarding the Executive's interpretation of the term "hostilities" in view of the language quoted above. Those Departments responded in a letter to the Chairman dated June 5, 1975, *reprinted* in *War Powers: A Test of Compliance* at 38-40. After first noting that "hostilities" is "definable in a meaningful way only in the context of an actual set of facts," the letter went on to state that, as applied by the Executive, the term included:

a situation in which units of the U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces, and "imminent hostilities" was considered to mean a situation in which there is a serious risk from hostile fire to the safety of United States forces. In our view, neither term necessarily encompasses irregular or infrequent violence which may occur in a particular area.

Id. at 39.

We agree that the term "hostilities" should not be read necessarily to include sporadic military or paramilitary attacks on our armed forces stationed abroad. Such situations do not generally involve the full military engagements with which the Resolution is primarily concerned. For the same reason, we also believe that as a general matter the presence of our armed forces in a foreign country whose government comes under attack by "guerrilla" operations would not trigger the reporting provisions of the War Powers Resolution unless our armed forces were assigned to "command, coordinate, participate in the movement of, or accompany" the forces of the host government in operations against such guerrilla operations.¹⁶ 50 U.S.C. § 1547(c).

Furthermore, if our armed forces otherwise lawfully stationed in a foreign country were fired upon and defended themselves, we doubt that such engagement in hostilities would be covered by the consultation and reporting provisions of the War Powers Resolution. The structure and thrust of those provisions is the "introduction" of our armed forces into such a situation and not the fact that those forces may be engaged in hostilities. It seems fair to read "introduction" to require an active decision to place forces in a hostile situation rather than their simply acting in self-defense.¹⁷

A final issue of statutory construction involves interpretation of the requirement for consultation with "Congress."¹⁸ As a practical matter, consultation with more than a select group of congressional leaders has never been attempted. The Legal Adviser of the State Department has argued for this Administration, correctly in our view, that there are practical limits to the consultation requirement; he has said that meaningful consultations with "an appropriate group of congressional representatives should be possible."¹⁹ During the *Mayaguez* incident about ten House and eleven Senate Members were contacted concerning the measures to be taken by the President.²⁰

In requiring consultation in "every possible instance," Congress meant to be firm yet flexible. H. R. Rep. No. 287, 93d Cong., 1st Sess. 6 (1973). The House report continued:

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

¹⁶ We believe that the definition of "introduction of United States Armed Forces" in § 1547(c) supports the proposition that members of the armed forces stationed in a foreign country for purposes of training or advising military forces of the host government are not generally to be viewed as subject to the War Powers Resolution.

¹⁷ In contrast, as passed by the Senate, the bill would have required a report whenever our armed forces are "engaged in hostilities." S. 440, 93d Cong., 1st Sess. § 4, 119 Cong. Rec. 25,119 (1973).

¹⁸ This replaced an earlier version which merely required consultation with the leadership and appropriate committees of Congress. H. R. Conf. Rep. No. 547, 93d Cong., 1st Sess. 8 (1973); H. R. Rep. No. 287, 93d Cong., 1st Sess. 6 (1973).

¹⁹ Statement of State Department Legal Adviser Hansell before the Senate Foreign Relations Committee, reprinted in State Department Bulletin, August 29, 1977, at 291-92.

²⁰ Testimony of State Department Legal Adviser Leigh in *War Powers: A Test of Compliance* at 78.

should apply to extraordinary and emergency circumstances—even when it is not possible to get formal congressional approval in the form of a declaration of war or other specific authorization.

At the same time, through use of the word “possible” it recognizes that a situation may be so dire, e.g., hostile missile attack underway, and require such instantaneous action that no prior consultation will be possible.

The State Department Legal Adviser, again speaking for this Administration, has pointed out the problem that exists in emergencies, noting that “[B]y their very nature some emergencies may preclude opportunity for legislative debate prior to involvement of the Armed Forces in hostile or potentially hostile situations.” He recognized, however, that consultation may be had “in the great majority of cases.” ²¹

There may be constitutional considerations involved in the consultation requirement. When President Nixon vetoed the Resolution, he did not suggest that either the reporting or consultation requirements were unconstitutional. Department of State Bulletin, November 26, 1973, at 662–64. No Administration has taken the position that these requirements are unconstitutional on their face. Nevertheless, there may be applications which raise constitutional questions. This view was stated succinctly by State Department Legal Adviser Leigh:

Section 3 of the War Powers Resolution has, in my view, been drafted so as not to hamper the President’s exercise of his constitutional authority. Thus, Section 3 leaves it to the President to determine precisely how consultation is to be carried out. In so doing the President may, I am sure, take into account the effect various possible modes of consultation may have upon the risk of a breach in security. Whether he could on security grounds alone dispense entirely with “consultation” when exercising an independent constitutional power, presents a question of constitutional and legislative interpretation to which there is no easy answer. In my personal view, the resolution contemplates at least some consultation in every case irrespective of security considerations unless the President determines that such consultation is inconsistent with his constitutional obligation. In the latter event the President’s decision could not as a practical matter be challenged but he would have to be prepared to accept the political consequences of such action, which might be heavy.

²¹ Statement of Legal Adviser Hansell, *id.*

War Powers: A Test of Compliance at 100. Other constitutional issues raised by the Resolution concern the provisions terminating the use of our armed forces either through the passage of time (60 days) or the passage of a concurrent resolution.

We believe that Congress may, as a general constitutional matter, place a 60-day limit on the use of our armed forces as required by the provisions of § 1544(b) of the Resolution. The Resolution gives the President the flexibility to extend that deadline for up to 30 days in cases of “unavoidable military necessity.” This flexibility is, we believe, sufficient under any scenarios we can hypothesize to preserve his constitutional function as Commander-in-Chief. The practical effect of the 60-day limit is to shift the burden to the President to convince the Congress of the continuing need for the use of our armed forces abroad. We cannot say that placing that burden on the President unconstitutionally intrudes upon his executive powers.

Finally, Congress may regulate the President’s exercise of his inherent powers by imposing limits *by statute*. We do not believe that Congress may, on a case-by-case basis, require the removal of our armed forces by passage of a concurrent resolution which is not submitted to the President for his approval or disapproval pursuant to Article I, § 7 of the Constitution.

JOHN M. HARMON
Assistant Attorney General
Office of Legal Counsel

EXHIBIT E

115 STAT. 224

PUBLIC LAW 107-40—SEPT. 18, 2001

Public Law 107-40
107th Congress

Joint Resolution

Sept. 18, 2001
[S.J. Res. 23]

To authorize the use of United States Armed Forces against those responsible
for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and
Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and
Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

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

Authorization for
Use of Military
Force.
50 USC 1541
note.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Authorization for Use of Military Force”.

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

President.

(a) **IN GENERAL.**—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) **WAR POWERS RESOLUTION REQUIREMENTS.**—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

PUBLIC LAW 107-40—SEPT. 18, 2001

115 STAT. 225

(2) APPLICABILITY OF OTHER REQUIREMENTS.—Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

LEGISLATIVE HISTORY—S.J. Res. 23 (H.J. Res. 64):

CONGRESSIONAL RECORD, Vol. 147 (2001):

Sept. 14, considered and passed Senate and House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 37 (2001):

Sept. 18, Presidential statement.



EXHIBIT F

PUBLIC LAW 107-243—OCT. 16, 2002

AUTHORIZATION FOR USE OF MILITARY
FORCE AGAINST IRAQ RESOLUTION OF 2002

116 STAT. 1498

PUBLIC LAW 107-243—OCT. 16, 2002

Public Law 107-243
107th Congress

Joint Resolution

Oct. 16, 2002

[H.J. Res. 114]

To authorize the use of United States Armed Forces against Iraq.

Whereas in 1990 in response to Iraq's war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;

Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;

Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;

Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq's weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;

Whereas in Public Law 105-235 (August 14, 1998), Congress concluded that Iraq's continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in "material and unacceptable breach of its international obligations" and urged the President "to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations";

Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;

Whereas Iraq persists in violating resolution of the United Nations Security Council by continuing to engage in brutal repression of its civilian population thereby threatening international peace

PUBLIC LAW 107-243—OCT. 16, 2002

116 STAT. 1499

and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;

Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;

Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;

Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;

Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens;

Whereas the attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;

Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

Whereas United Nations Security Council Resolution 678 (1990) authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687 (1991), repression of its civilian population in violation of United Nations Security Council Resolution 688 (1991), and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949 (1994);

Whereas in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1), Congress has authorized the President "to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolution 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677";

Whereas in December 1991, Congress expressed its sense that it "supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against

116 STAT. 1500

PUBLIC LAW 107–243—OCT. 16, 2002

Iraq Resolution (Public Law 102–1),” that Iraq’s repression of its civilian population violates United Nations Security Council Resolution 688 and “constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region,” and that Congress, “supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688”;

Whereas the Iraq Liberation Act of 1998 (Public Law 105–338) expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;

Whereas on September 12, 2002, President Bush committed the United States to “work with the United Nations Security Council to meet our common challenge” posed by Iraq and to “work for the necessary resolutions,” while also making clear that “the Security Council resolutions will be enforced, and the just demands of peace and security will be met, or action will be unavoidable”;

Whereas the United States is determined to prosecute the war on terrorism and Iraq’s ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;

Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States, as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107–40); and

Whereas it is in the national security interests of the United States to restore international peace and security to the Persian Gulf region: Now, therefore, be it

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

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Authorization for Use of Military Force Against Iraq Resolution of 2002”.

Authorization for
Use of Military
Force Against
Iraq Resolution
of 2002.
50 USC 1541
note.

PUBLIC LAW 107-243—OCT. 16, 2002

116 STAT. 1501

SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS.

The Congress of the United States supports the efforts by the President to—

- (1) strictly enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq and encourages him in those efforts; and
- (2) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq.

SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) **AUTHORIZATION.**—The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

- (1) defend the national security of the United States against the continuing threat posed by Iraq; and
- (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

(b) **PRESIDENTIAL DETERMINATION.**—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

- (1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and
- (2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001.

(c) **WAR POWERS RESOLUTION REQUIREMENTS.**—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.

SEC. 4. REPORTS TO CONGRESS.

(a) **REPORTS.**—The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 3 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105-338). President.

116 STAT. 1502

PUBLIC LAW 107-243—OCT. 16, 2002

(b) SINGLE CONSOLIDATED REPORT.—To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of the War Powers Resolution (Public Law 93-148), all such reports may be submitted as a single consolidated report to the Congress.

(c) RULE OF CONSTRUCTION.—To the extent that the information required by section 3 of the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1) is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of such resolution.

Approved October 16, 2002.

LEGISLATIVE HISTORY—H.J. Res. 114 (S.J. Res. 45) (S.J. Res. 46):

HOUSE REPORTS: No. 107-721 (Comm. on International Relations).

CONGRESSIONAL RECORD, Vol. 148 (2002):

Oct. 8, 9, considered in House.

Oct. 10, considered and passed House and Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 38 (2002):

Oct. 16, Presidential remarks and statement.



EXHIBIT G

THE WHITE HOUSE

WASHINGTON

July 25, 2014

Dear Mr. Speaker:

Today the House will consider H.Con.Res. 105, a resolution introduced by Representative James McGovern, Representative Walter Jones, and Representative Barbara Lee. We appreciate the House debate on Iraq, and its readiness to vote on a resolution consistent with the Administration's views.

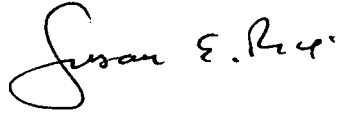
As the President unequivocally stated in late June, "American forces will not be returning to combat in Iraq, but we will help Iraqis as they take the fight to terrorists who threaten the Iraqi people, the region, and American interests as well."

The President has also made clear that if American interests are threatened, "we will be prepared to take targeted and precise military action if and when we determine that the situation on the ground requires it." The President has made exceedingly clear that he will consult closely with Congress and leaders in Iraq and in the region.

While we understand the House of Representatives will consider this resolution that supports the President's position, we believe a more appropriate and timely action for Congress to take is the repeal of the outdated 2002 Authorization for Use of Military Force in Iraq (P.L. 107-243). With American combat troops having completed their withdrawal from Iraq on December 18, 2011, the Iraq AUMF is no longer used for any U.S. government activities and the Administration fully supports its repeal. Such a repeal would go much further in giving the American people confidence that ground forces will not be sent into combat in Iraq.

We look forward to continuing to work with the Congress on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan E. Rice". The signature is fluid and cursive, with the first name "Susan" being more prominent than the last name "Rice".

Susan E. Rice
Assistant to the President for
National Security Affairs

The Honorable John A. Boehner
Speaker of the
House of Representatives
Washington, D.C. 20515