

WAR POWERS RESOLUTION: PRESIDENTIAL COMPLIANCE

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ISSUE DEFINITION

The purpose of the War Powers Resolution (P.L. 93-148, passed over President Nixon's veto on Nov. 7, 1973) is that both the Congress and the President share in making decisions that may get the United States involved in war or hostilities. Compliance becomes an issue whenever U.S. forces are used abroad in situations that might be construed as hostilities or imminent hostilities. Issues are whether the President consults with Congress prior to the introduction, whether he reports as required, and whether a congressional authorization is required for the troops to remain beyond 60-90 days.

The most recent occasion raising these issues was the landing on Grenada on Oct. 25, 1983. The War Powers Resolution also received a major test when the President sent Marines to participate in a Multinational Force in Lebanon and the Marines were fired upon. On Sept. 29, 1983, Congress passed a joint resolution determining that the requirement of sec. 4(a)(1) of the War Powers Resolution became operative on Aug. 29, 1983, and authorizing the troops to remain for 18 months. The War Powers Resolution currently is also an issue in the use of U.S. forces in Central America and of military advisers in El Salvador.

A more basic issue is whether the War Powers Resolution is an appropriate and effective means of assuring congressional participation in actions that might get the United States involved in war. Some observers contend that the War Powers Resolution has not significantly increased executive branch consultation with Congress, while others emphasize that it has served as an effective restraint against Presidential use of armed forces in conflicts.

This issue brief does not deal with the substantive merits of using armed forces in specific cases, but rather with the application of the War Powers Resolution in those cases.

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BACKGROUND AND POLICY ANALYSIS

Under the Constitution, war powers are divided. Congress has the power to declare war and raise and support the armed forces (Article I, section 8), while the President is Commander in Chief (Article II, section 2). It is generally agreed that the Commander in Chief rôle gives the President power

to repel attacks against the United States and makes him responsible for leading the armed forces. During the Vietnam war, when the United States found itself involved for many years in an undeclared and unpopular war, Congress sought to reassert its authority to decide when the United States should become involved in a war or the use of armed forces that might lead to war. On Nov. 7, 1973, it passed the War Powers Resolution (P.L. 93-148) over the veto of President Nixon.

The War Powers Resolution requires the President in every possible instance to consult with Congress before introducing American armed forces into hostilities or potential hostilities unless there has been a declaration of war or other specific congressional authorization. It also requires the President to report to Congress any introduction of forces into hostilities or imminent hostilities, sec. 4(a)(1); into foreign territory while equipped for combat, sec. 4(a)(2); or in numbers which substantially enlarge U.S. forces equipped for combat already in a foreign nation, sec. 4(a)(3). Once a report is submitted "or required to be submitted," under sec. 4(a)(1), Congress must authorize the use of forces within 60 to 90 days or the forces must be withdrawn.

One provision of the War Powers Resolution may be affected by the Supreme Court in its ruling against a legislative veto in the case of Immigration and Naturalization Service v. Chadha on June 23, 1983. Section 5(c) provides that "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." Since a concurrent resolution does not require presentment to the President, it would apparently be invalidated under the reasoning applied by the Court. On Oct. 28, 1983, the Senate adopted an amendment by Senator Byrd to the State Department authorization bill substituting a joint resolution for the concurrent resolution in Section 5(c) of the War Powers Resolution. The conference report substituted a separate provision of law stating that any joint resolution or bill to required the removal of U.S. armed forces engaged in hostilities abroad without specific congressional authorization would be subject to the priority procedures of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. These deal with expedited procedure in the Senate. (See Issue Brief IB83123: Foreign Policy Effect of the Supreme Court's Legislative Veto Decision.)

#### Action in Grenada

On Oct. 25, 1983, President Reagan announced that he had ordered an invasion of Grenada by nearly 1,900 Marines and Army airborne troops. He said that on Oct. 23 the United States had received an urgent, formal request from "the five member nations of the Organization of Eastern Caribbean States to assist in a joint effort to restore order and democracy on the island of Grenada." Also participating in the multinational effort were contingents from Antigua, Barbados, Dominica, Jamaica, St. Lucia, and St. Vincent. The purposes the President gave were to protect lives including up to 1,000 Americans, forestall further chaos, assist in the restoration of conditions law and order and of governmental institutions, and help restore democratic institutions.

That same day the President reported the action to Congress "consistent with the War Powers Resolution", but not citing section 4(a)(1) that troops

have been introduced into situations of hostilities or imminent hostilities. Thus his report did not trigger section 5(b) requiring the withdrawal of the forces within 60 to 90 days.

On Nov. 1, 1983, the House adopted by a vote of 403-23 H.J.Res. 402 declaring that the requirements of sec. 4(a)(1) of the War Powers Resolution became operative on Oct. 25, 1983. The Senate adopted a similar measure on Oct. 28 by a vote of 64 to 20, but on Nov. 17 it was deleted in the conference report on the debt limit bill to which it was attached.

On Nov. 17, White House spokesman Larry Speakes said the Administration had indicated that there was no need for action on war powers in Grenada as the "combat troops will be out, as Department of Defense said, before the 60-day period expires." Speaker O'Neill took the position that whether or not Congress approved a resolution invoking the War Powers Resolution, the timetable for withdrawal had begun when the invasion started on Oct. 25.

In regard to the consultation required by section 3 of the Resolution, the President met with several congressional leaders at 8 p.m. on Oct. 24. This was after the directive ordering the invasion had been signed at 6 p.m., but before the actual invasion that began at 5:30 a.m., Oct. 25. Speaker O'Neill who was among the group, along with the Senate and House Majority and Minority Leaders, said the group had been briefed but had not been asked for advice.

Of the purposes cited by the President, the rescue of American citizens is most widely recognized as being within the purview of the powers of the Commander in Chief. The Senate version of the War Powers Resolution contained this as one of the two situations, along with repelling an attack, that the President could undertake on his own authority. The Foreign Relations Committee, in reporting its version of the War Powers Resolution in 1972, defined as one of the conditions under which the President could make emergency use of the armed forces:

to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected by such government to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States, and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country... (For additional information, see Issue Brief IB83170: Grenada: Issues Concerning the Use of U.S. Forces.)

#### Peacekeeping Force in Lebanon

The War Powers Resolution faced perhaps its greatest test to date when President Reagan sent Marines to participate in a multinational force in Lebanon in 1982 and in August 1983 renewed fighting broke about among various factions and the Marines were fired upon. President Reagan filed 3 reports under the War Powers Resolution, but he did not report that the forces were

being introduced into hostilities or imminent hostilities as provided for in Sec. 4(a)(1). On Sept. 29, 1983, Congress passed the Multinational Force in Resolution (P.L. 98-119) determining that the requirements of section 4(a)(1) of the War Powers Resolution became operative on Aug. 29, 1983. In the same resolution, Congress authorized the continued participation of the Marines in the Multinational Force for 18 months. The participation was to be limited, the resolution stated, to the performance of the functions and the limitations specified in the agreement of Sept. 25, 1982, establishing the Multinational Force, except that this was not to preclude "such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon." Under four circumstances the authorization was to terminate earlier than 18 months: (1) the withdrawal of all foreign forces from Lebanon, unless the President certified the forces were still necessary to achieve the purposes specified in the Sept. 25 letters; (2) the assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force; (3) the implementation of other effective security arrangements in the area; or (4) the withdrawal of all other countries from participation in the Multinational Force.

The Sept. 25 agreement between Lebanon and the United States said that the Multinational Force was to act as an "interposition force", assist the Lebanese Armed Forces, and facilitate the restoration of Lebanese sovereignty and authority over the Beirut area. It also stated that the Multinational Force was to act in close coordination with the Lebanese Armed Forces and provide security to their personnel operating with the U.S. contingent.

The Multinational Force in Lebanon Resolution provided that the President was to report to Congress on the situation in Lebanon as required by section 4(c) of the War Powers Resolution at least every three months and in addition describe: (1) the activities being performed by the Multinational Force; (2) the composition of the force and the deployment of each participating country; (3) the results of efforts to reduce the force; (4) the results of continued participation in advancing U.S. foreign policy interests; and (5) the progress toward national political reconciliation among all Lebanese groups. It specified that nothing in the resolution modified any provision of the War Powers Resolution or the Lebanon Emergency Assistance Act which required to the congressional authorization for any substantial expansion in the number or role of the U.S. armed forces in Lebanon. Finally, it contained priority procedures for congressional consideration of any joint resolution or bill intended to amend or repeal the resolution.

In signing the measure on Oct. 12, 1983, President Reagan stated:

"Nor should signing be viewed as any acknowledgment that the President's constitutional authority can be impermissibly infringed by statute, that Congressional authorization would be required if and when the period specified in Section 5(b) of the War Powers Resolution might be deemed to have been triggered and the period had expired or that Section 6 of the Multinational Force in Lebanon Resolution may be interpreted to revise the President's constitutional authority to deploy United States armed forces...."

Involvement of U.S. armed forces in Lebanon began on Aug. 25, 1982, when a group of 800 Marines landed in Lebanon to participate in a "temporary peacekeeping" multinational force to help evacuate Palestine Liberation

Organization fighters from Beirut. The Marines participating in this first Multinational Force left Lebanon on Sept. 10, 1982.

On Sept. 20, 1982, President Reagan announced that the United States, France, and Italy had agreed to form a new multinational force to return to Lebanon for a limited period of time to help maintain order until the lawful authorities in Lebanon could discharge those duties. The action followed three events that took place after the withdrawal of the Marines: the assassination of President-elect Bashir Gemayel on Sept. 14, the entry of Israeli forces into West Beirut, and the massacre of Palestinian civilians by Lebanese Christian militiamen the weekend of Sept. 17.

On Sept. 29, 1982, President Reagan submitted a report "consistent with the War Powers Resolution," but without citation to any specific provision, that 1,200 Marines had begun to arrive in Beirut. He said the American force would not engage in combat but might exercise the right of self-defense and would be equipped accordingly. He also said the deployment would be for a limited period and that there was no intention the troops would become involved in hostilities.

On Nov. 28, 1982, the end of the sixty day period following their introduction, the Marines were still in Lebanon.

The Lebanon Emergency Assistance Act of 1983, (P.L. 98-43, approved June 27, 1983) required statutory authorization for any substantial expansion in the number or role in Lebanon of U.S. Armed Forces. It also stated:

Nothing in this section is intended to modify, limit, or suspend any of the standards and procedures prescribed by the War Powers Resolution of 1983.

On Aug. 23, 1983, fighting broke out between various factions and on Aug. 29 the Marines were fired upon and two Marines were killed. On Aug. 30, President Reagan sent a letter to Congress reporting the situation "consistent with Section 4 of the War Powers Resolution" but not citing Section 4(a)(1) that would trigger the time limit.

As the Marine casualties increased and the action enlarged, there were more calls in Congress for the application of the War Powers Resolution. On Sept. 20 Congressional leaders and President Reagan agreed on a compromise resolution (H.J.Res. 364 and S.J.Res. 166) described above. On Sept. 21 the House Appropriations Committee approved an amendment to the continuing resolution for FY84, sponsored by Rep. Clarence Long. that after 60 days funds could not be "obligated or expended for peacekeeping activities in Lebanon by United States Armed Forces" unless the President had submitted a report under Sec. 4(a)(1) of the War Powers Resolution.

The House passed H.J.Res. 364 by a vote of 270 to 161 on Sept. 28 but rejected the amendment relating to a cutoff of funds unless the President invoked Section 4(a)(1) of the War Powers Resolution.

On Sept. 29 the Senate passed S.J.Res. 159 by a vote of 54 to 46. The Senate rejected an amendment by Senator Byrd to require the President to submit to Congress the report required under Sec. 4(a)(1) of the War Powers Resolution, to specify the missions of the U.S. forces, and to extend the 60 day period for 60 days from the date of enactment. The House accepted the Senate bill by a vote of 253 to 156. The Senate version that was adopted called for a report every 90 days, instead of every 60 days as in the House bill, but Chairman Zablocki said that the President had said he would report

every 60 days and that he would provide Speaker O'Neill assurances to this effect in a letter.

Meanwhile, on Sept. 25 a cease-fire in Lebanon was announced. In a letter of Sept. 27 to House Speaker O'Neill, relating to executive branch interpretation of the Lebanon resolution, President Reagan said, "I can assure you that if our forces are needed in Lebanon beyond the 18-month period, it would be my intention to work together with the Congress with a view toward taking action on mutually acceptable terms." He referred to the requirements of the Lebanon Emergency Assistance Act but not the War Powers Resolution in regard to seeking congressional authorization if circumstances required any substantial expansion in the number or role of U.S. armed forces in Lebanon.

A few weeks later, on Oct. 23, 1983, more than 200 Marines in Beirut were killed in a car-bomb attack.

Some resolutions were introduced to repeal the Multinational Force in Lebanon Resolution or to shorten the authorized period for the Marines to remain in Lebanon. (For more information, see Issue Brief 83154: Lebanon: Lebanese Crisis.)

#### Military Advisers in El Salvador

At the end of February 1981, the Department of State announced the dispatch of 20 additional military advisers to El Salvador to aid its government against guerilla warfare. There were already 19 military advisers in El Salvador sent by the Carter Administration. The Reagan Administration said the insurgents were organized and armed by Soviet bloc countries, particularly Cuba. By Mar. 14, the Administration had authorized a total of 54 advisers, including experts in intelligence, combat training, helicopter maintenance, communications, and counterinsurgency.

The action immediately raised questions in Congress regarding the applicability of the War Powers Resolution. On May 1, 1981, eleven Members of Congress filed a lawsuit (Crockett v. Reagan, 558 F. Supp. 893 (D.D.C. 1982)) against the President on grounds that he had violated the Constitution and the War Powers Resolution by sending the advisers to El Salvador. On Oct. 4, 1982, U.S. District Court Judge Joyce Hens Green dismissed the suit. She ruled that Congress, not the court, must resolve the question of whether the U.S. forces in El Salvador are involved in a hostile or potentially hostile situation. While there could be situations in which a court could conclude that U.S. forces were involved in hostilities, she ruled, the "subtleties of fact-finding in this situation should be left to the political branches." She noted that Congress had taken no action to show it believes the President's decision is subject to the War Powers Resolution. Representative Crockett filed an appeal on Mar. 9, 1983.

The President did not report the situation under the War Powers Resolution. Their primary justification was that the Department pledged that "if some change in circumstances should occur in the future which raises the prospect of imminent involvement of these personnel in hostilities, we would of course comply with the requirements of the Resolution." A second justification for not reporting under the War Powers Resolution was that the military personnel being introduced were not equipped for combat. They would carry only personal sidearms which they were authorized to use only in their own defense or the defense of other Americans.



The third justification derived from a State Department interpretation of language in section 8(c) of the War Powers Resolution. The legislation states that introduction of armed forces includes "the assignment of 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." The Department of State said, U.S. military personnel "will not act as combat advisors, and will not accompany Salvadoran forces in combat, on operational patrols, or in any other situation where combat is likely."

The conference report on the War Powers Resolution explained that this was language modified from a Senate provision requiring specific statutory authorization for assigning members of the Armed Forces for such purposes. The report of the Senate Foreign Relations Committee on its bill said:

The purpose of this provision is to prevent secret, unauthorized military support activities and to prevent a repetition of many of the most controversial and regrettable actions in Indochina. The ever deepening ground combat involvement of the United States in South Vietnam began with the assignment of U.S. "advisers" to accompany South Vietnamese units on combat patrols; and in Laos, secretly and without congressional authorization, U.S. "advisers" were deeply engaged in the war in northern Laos.

Amid reports that the number of U.S. advisers in El Salvador might be increased, additional legislation relating to the War Powers Resolution and El Salvador was introduced in 1983. One approach, found in H.R. 1619 and H.R. 1777, was to amend the War Powers Resolution to require a specific authorization prior to the introduction of U.S. forces into hostilities or combat in El Salvador. The other approach, found in H.Con.Res. 67, was to declare that the commitment of U.S. armed forces in El Salvador required the President to comply with Sec. 4 (A) of the War Powers Resolution, requiring the President to submit a report.

The issue has been raised whether hostile fire pay for U.S. military personnel in El Salvador indicates situations of hostilities or imminent hostilities that should be reported under the War Powers Resolution. Under section 9 of the Uniformed Services Pay Act of 1963, the Department of Defense issued regulations permitting \$65 a month payment per person participating in a hostile encounter, and permitting designation of an area as a hostile fire area. The General Accounting Office reported on July 27, 1982 that most of the U.S. army personnel in El Salvador were receiving hostile fire pay.

The conflict wore on. In early February 1983 Army Staff Sergeant Jay T. Stanley became the first U.S. soldier to be wounded when a helicopter in which he was flying was fired upon. On May 25, 1983, Navy Commander Albert A. Shaufelberger, another U.S. military adviser, was shot and killed in San Salvador.

It was reported in the press that the Administration was considering a plan to increase the number of military advisers from 55 to 125. On July 26 the House rejected an amendment to the Defense Authorization bill that sought

to limit the number of active duty military advisers in El Salvador to 55, unless the President reported them under Section 4 (a) (1) of the War Powers Resolution. (For more information, see Issue Brief 83051: El Salvador: Policy Issues for the 98th Congress.)

### Military involvement in Central America

The Reagan Administration took the position that the Nicaraguan Sandinista Government, aided by Cuba and the Soviet Union, was providing arms to the Salvadoran insurgents and was refusing to permit political pluralism in the country. Reports of U.S. covert assistance to anti-Sandinista rebels of the Nicaraguan Democratic Forces (FDN) began to appear in the press by late 1982. In December 1982 Congress added to the continuing appropriations resolution (P.L. 97-377) the Boland amendment that prohibited the use of funds in the act for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras. While Congress debated whether the President was complying with the Boland amendment in March 1983, Nicaragua charged that the United States was sponsoring and directing an invasion against it.

On July 27, 1983, President Reagan explained the planning of two "joint training exercises" in Central America and the Caribbean. One would be a series of ground exercises in Honduras with the combined forces of Honduras and the United States involving 3,000 to 4,000 U.S. Army and Marine combat troops; the second would be a series of ocean exercises with the U.S. fleet. The President characterized the maneuvers as routine and said the United States had been regularly conducting joint exercises with Latin American countries since 1965. There were reports in the press that the Navy was planning practices of a naval blockade or "quarantine" around Nicaragua, and some speculation that the practice operations might turn into an actual quarantine.

The first contingent of U.S. troops for the maneuvers called "Big Pine II" landed in Honduras on Aug. 8. The number expected to be involved was raised to between 5,000 and 6,000 ground troops plus 19 warships and 140 fighter planes.

The maneuvers, part of a policy to prevent the spread of leftist governments in Central America, immediately raised questions about the War Powers Resolution, including its adequacy to assure a congressional voice in decisions that conceivably might lead to involvement in hostilities.

A major issue was whether the U.S. forces were being introduced into hostilities or situations of imminent hostilities, and whether the maneuvers would be required to be reported under Section 4(a)(1) which would trigger the 60-90 day time limit requiring the withdrawal of the forces unless Congress specifically authorized further use.

A second major issue was whether the maneuvers should be reported under Section 4(a)(2) or 4(a)(3) that require reporting but do not trigger the time limits.

A third issue is whether the President has complied with the requirement in Section 3 to consult with Congress before introducing troops into situations of hostilities or imminent hostilities.

On July 28 Senator Minority Leader Robert Byrd contended that Congress was

not being kept apprised. Majority Leader Howard Baker said that the President had explained his reason for the Honduran exercises to him and House Minority Leader Robert Michel at a luncheon on July 25, although he did not understand that was the reason for the meeting. (For more information, see Issue Brief 82115; Nicaragua: Conditions and Issues for U.S. Policy.)

#### Reporting Requirements Under the War Powers Resolution

Section 4(a)(1) requires the reporting, within 48 hours, of the introduction of U.S. Armed Forces, in the absence of congressional authorization, "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."

Some indication of the meaning of this phrase is given in the House report (H.Rept. 93-287) on its War Powers bill:

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

Section 4(a)(2) requires the reporting of the introduction of troops "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." According to the House report (H.Rept. 93-287) this was to cover

the initial commitment of troops in situations in which there is no actual fighting but some risk, however small, of the forces being involved in hostilities. A report would be required any time combat military forces were sent to another nation to alter or preserve the existing political status quo or to make the U.S. presence felt. Thus, for example, the dispatch of Marines to Thailand in 1962 and the quarantine of Cuba in the same year would have required Presidential reports. Reports would not be required for routine port supply calls, emergency aid measures, normal training exercises, and other noncombat military activities.

Section 4(a)(3) requires the reporting of the introduction of troops "in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation." The House report elaborated:

While the word "substantially" designates a flexible criterion, it is possible to arrive at a common-sense

understanding of the numbers involved. A 100% increase in numbers of Marine guards at an embassy -- say from 5 to 10 -- clearly would not be an occasion for a report. A thousand additional men sent to Europe under present circumstances does not significantly enlarge the total U.S. troop strength of about 300,000 already there. However, the dispatch of 1,000 men to Guantanamo Bay, Cuba, which now has a complement of 4,000 would mean an increase of 25%, which is substantial. Under this circumstance, President Kennedy would have been required to report to Congress in 1962 when he raised the number of U.S. military advisers in Vietnam from 700 to 16,000.

Section 4(b) requires the President to furnish such other information as Congress may request and Section 4(c) requires the President to continue to report to Congress periodically, and at least every six months.

#### Instances Formally Reported Under the War Powers Resolution

Presidents have submitted reports under the War Powers Resolution on the following occasions,

(1) On Apr. 4, 1975, President Ford reported that he had directed United States participation in an international humanitarian relief attempt to transport refugees from Danang and other seaports to safer areas in Vietnam. He cited as authority his constitutional authority as Commander in Chief and Chief Executive in the conduct of foreign relations, and authorizations under the Foreign Assistance Act of 1961 for humanitarian assistance to refugees.

(2) On Apr. 12, 1975, President Ford reported the use of armed forces to assist with the evacuation of U.S. nationals from Cambodia. The authority cited was the President's constitutional executive power and authority as Commander in Chief.

(3) On Apr. 30, 1975, President Ford reported the use of armed forces to aid in the evacuation of U.S. citizens and others from South Vietnam. The authority cited was the President's constitutional executive power and his authority as Commander in Chief.

(4) On May 15, 1975, President Ford reported "taking note of Section 4(a)(1)" that he had ordered U.S. military forces to rescue the crew of and retake the ship Mayaguez that had been seized by Cambodian naval patrol boats on May 12. He reported that the ship had been retaken, and that the withdrawal of the forces had been undertaken. He cited as authority the President's Executive Power and authority as Commander in Chief.

(5) On Apr. 26, 1980, President Carter reported the use of armed forces in an unsuccessful attempt of Apr. 24 to rescue the American hostages in Iran. He cited as authority the President's powers as Chief Executive and Commander in Chief.

(6) On Mar. 19, 1982, President Reagan reported the deployment of military personnel and equipment to the Multinational Force and Observers (MFO) in the Sinai to assist in carrying out the treaty of peace between Egypt and Israel. The President said the report was provided "consistent with Section 4(a)(2) of the War Powers Resolution." President Reagan cited as authority for the

deployment Public Law 97-132, the Multinational Force and Observers Participation Resolution, and his "constitutional authority with respect to the conduct of foreign relations and as Commander-in-Chief...."

(7) On Aug. 21, 1982, President Reagan reported the dispatch of 800 Marines to serve in the multinational force to assist in the withdrawal of members of the Palestine Liberation force from Lebanon. The President cited his "constitutional authority with respect to the conduct of foreign relations and as commander-in-chief." The Marines in the first Multinational Force left on Sept. 20, 1982.

(8) On Sept. 29, 1982, President Reagan reported the deployment of 1,200 Marines to serve in a second temporary multinational force to facilitate the restoration of Lebanese government sovereignty. He said the report was being submitted consistent with the War Powers Resolution, but did not mention a specific section of the Resolution. He cited as authority "the President's constitutional authority with respect to the conduct of foreign relations and as Commander in Chief of the United States armed forces."

(9) On Aug. 8, 1983, President Reagan reported the deployment of two AWACS electronic surveillance planes and eight F-15 fighter planes and ground logistical support forces to assist Chad against Libyan and rebel forces. He said the report was being submitted consistent with Section 4 of the War Powers Resolution and that the deployment was taken under his constitutional authority with respect to foreign relations and as Commander in Chief. On Aug. 23, 1983, State Department spokesman Alan D. Romberg announced that the planes were being withdrawn.

(10) On Aug. 30, 1983, President Reagan reported "consistent with Section 4 of the War Powers Resolution" that on Aug. 29 Marine positions in Lebanon came under fire and two Marines were killed. Although the President did not cite sec. 4(a)(1), in the Multinational Force in Lebanon Resolution Congress subsequently determined that the requirements of sec. 4(a)(1) of the War Powers Resolution became operative on Aug. 29, 1983, and authorized continued participation in the Multinational Force for 18 months.

(11) On Oct. 25, 1983, President Reagan reported "consistent with the War Powers Resolution" that he had ordered a landing on Grenada by Marines and Army airborne troops, in response to a request from "five member nations of the Organization of Eastern Caribbean States."

#### Instances Not Formally Reported to the Congress

In some instances where armed forces have been used abroad, questions were raised in Congress because reports were not filed. In addition to the case of El Salvador and military exercises in Central America already discussed, the instances included the evacuation of civilians from Cyprus in 1974 and from Lebanon in 1976, the Korean tree-cutting of 1976, and the transport of European troops to Zaire in 1978.

On July 22 and 23, 1974, helicopters from five U.S. naval vessels evacuated approximately 500 Americans and foreign nationals from hostilities in Cyprus.

On June 20, 1976, a U.S. Navy landing craft evacuated 263 Americans and Europeans from Lebanon during fighting between Lebanese factions. An overland convoy evacuation to Damascus had been blocked by hostilities.

In August 1976, two American military personnel who had entered the demilitarized zone in Korea to cut down a tree were killed by North Korean soldiers, and additional forces were sent to Korea during the surrounding period of tension. Representative Elizabeth Holtzman raised the question of compliance with the War Powers Resolution at hearings on Sept. 1, 1976. The Administration took the position that it would be an undesirable precedent to construe the resolution as requiring a report when a "relative handful" of people had been added to the 41,000 troops already in Korea. The augmenting forces included a squadron of 20 F-111s and a squadron of 18 F-4s.

From May 19 through June 1978, the United States utilized transport aircraft to provide logistical support to Belgian and French rescue operations in Zaire. The President did not submit a report on the operation under the War Powers Resolution. In August, the House Foreign Affairs Committee held hearings on the question of compliance with the War Powers Resolution in that instance. Chairman Clement Zablocki agreed with the Department of State that the Zaire airlift operation did not fall within the scope of action requiring reports. Representative Paul Findley, on the other hand, contended that the operation had placed American servicemen in a situation of "imminent hostilities," and introduced a resolution (H.Con.Res. 689) requesting the President to submit such a report. No further action was taken on the resolution.

#### Consultation with Congress

Section 3 of the War Powers Resolution requires the President "in every possible instance" to consult with Congress before introducing U.S. Armed Forces into situations of hostilities and imminent hostilities, and to continue consultations as long as the armed forces remain.

A review of the instances involving the use of armed forces since the passage of the resolution, listed above, indicates there has been very little consultation with Congress under the War Powers Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops. An exception would be the U.S. participation in the international peacekeeping force in the Sinai, which was authorized in advance by legislation. There was a considerable amount of negotiation between the executive branch and Congress in connection with the Multinational Force in Lebanon Resolution, but it occurred after the decision to participate had been made and the Marines were in Lebanon.

One problem is the interpretation of when consultation is required. The War Powers Resolution established different criteria for consultation than for reporting. Consultation is required only before introducing armed forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." Reporting is required in these circumstances plus the additional ones listed in section 4(a), (2) and (3). Thus consultation is not necessarily required even though a report is.

A second problem is the meaning of the term consultation. The executive branch has often taken the view that the consultation requirement has been fulfilled when from the viewpoint of some Members of Congress it has not. The executive branch may count informational briefings as consultations, whereas Members of Congress may expect consultation to mean that they have an opportunity to express an opinion before the decision is made.

The House report on the measure said, "...consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated." A distinction has been made between consultation and authorization. Senator Jacob Javits, a Senate sponsor of the measure, latter said, "consultation is not a substitute for specific statutory authorization."

A third problem is who represents Congress for consultation purposes. It has been generally recognized that, since there are 535 Members of Congress, it would be extremely difficult to consult them all, except by seeking a formal authorization. The House version specifically called for consultation between the President and the leadership and appropriate committees. This was changed to less specific wording in conference, however, to provide some flexibility.

### Issues for Congress

Two separate but closely related issues confront Congress each time the President introduces armed forces into a situation abroad that conceivably could lead to their involvement in hostilities.

The first issue is whether the use of armed forces falls within the purview of the War Powers Resolution, whether the President is complying with the War Powers Resolution and, if not, whether Congress should pursue in the provisions of the War Powers Resolution.

The second issue is whether Congress concurs in the wisdom of the action. An assessment of the correctness of the decision to dispatch armed forces depends on the merits of each particular case, and is not within the scope of this issue brief. Nevertheless, related questions such as whether Congress approves of the action and how to determine its approval are part of the War Powers Resolution issue.

If Congress concurs in an action taken by a president application of the War Powers Resolution may be desirable either (a) to legitimize the action and strengthen it by making clear congressional support for the measure or (b) to establish the precedent that the War Powers Resolution does apply in such a situation. On the other hand, some may believe that it is preferable to leave the President more flexibility of action than is possible under the War Powers Resolution. Or some may not wish to have a formal vote on either the issue of applying the Resolution or the merits of utilizing armed forces in this particular case.

If Congress does not concur in an action taken by a president, application of the War Powers Resolution offers a way to bring about termination of the action.

If Congress does not take any action under the War Powers Resolution, it may be interpreted by some as acquiescence.

A longer term issue is whether the War Powers Resolution is working. Some contend that the War Powers Resolution has been effective in moderating the President's response to crisis situations because of his awareness that certain actions would trigger its reporting and legislative veto provisions.

Others believe it is not accomplishing its objectives and have proposed amendments. In 1977 Senator Eagleton proposed that the War Powers Resolution return to the original language of the version passed by the Senate, a requirement for prior congressional authorization except in specified cases, so that the President would not have 60 to 90 days in which he could act without authorization except to respond to an armed attack against the United States or its forces or to protect U.S. citizens while evacuating them. On Sept. 29, 1983, after the passage of the Multinational Force in Lebanon Resolution, Senators Cranston, Eagleton, and Stennis introduced such an amendment again (S. 1906).

Still others believe the War Powers Resolution restricts the President's effectiveness in foreign policy. On Oct. 31, 1983, Sen. Goldwater introduced S. 2030 to repeal the War Powers Resolution.

### LEGISLATION

P.L. 98-43, S. 639

Authorizes appropriations for economic and military assistance to Lebanon for FY83. Amended to require congressional authorization for U.S. participation in any new, expanded or extended peacekeeping force in Lebanon. Introduced Mar. 1, 1983; referred to Committee on Foreign Relations; reported May 5, 1983; passed Senate May 20; passed House June 2, 1983. Signed into law (P.L. 98-43) June 27, 1983.

P.L. 98-119, S.J.Res. 159

Authorizes the participation of U.S. Armed Forces in the multinational peacekeeping force in Lebanon for a period of 120 days from the 60-day period specified in the War Powers Resolution. Introduced Sept. 12, 1983; referred to Committee on Foreign Relations. Reported Sept. 23, 1983, with the text of S.J.Res. 166 substituted in lieu, authorizing participation for 18 months. Passed Senate Sept. 29, 1983. Passed House Sept. 29, 1983. Approved Oct. 12, 1983 (P.L. 98-119).

P.L. 98-164, H.R. 2915

Department of State Authorization. Amendments by Senator Byrd conforming provisions of the War Powers Resolution to a decision of the Supreme Court invalidating the congressional veto passed by Senate Oct. 20, 1983. Conference report substituted separate provision of law stipulating that any joint resolution or bill to require the removal of U.S. armed forces engaged in hostilities outside the U.S. without specific statutory authorization shall be considered in accordance with procedures of section 601(b) of the International Security and Arms Export Control Act of 1976. Conference report passed House Nov. 18, 1983. Passed Senate Nov. 18, 1983. Signed into law Nov. 22, 1983.

H.R. 1619 (Ottinger)

Amends the War Powers Resolution to require specific authorization before the introduction of any U.S. armed forces into hostilities in El Salvador. Introduced Feb. 23, 1983; referred to Committee on Foreign Affairs.

H.R. 1777 (Florio)

Amends the War Powers Resolution to require specific authorization for the introduction of U.S. armed forces into El Salvador for combat. Introduced Mar. 2, 1983; referred to Committee on Foreign Affairs.



## H.Res. 370 (Weiss)

To impeach President Reagan for ordering the invasion of Grenada in violation of the portion of the Constitution that confers war powers on the Congress. Introduced Nov. 10, 1983; referred to Committee on the Judiciary.

## H.Con.Res 67 (Ottinger)

Declares that the President's decision to commit U.S. military personnel to El Salvador requires that he comply with section 4(A) of the War Powers Resolution. Introduced Feb. 23, 1983; referred to Committee on Foreign Affairs.

## H.J.Res. 308

Increase in Public Debt limit. Amendment to invoke War Powers Resolution relating to Grenada; passed Senate Oct. 28, 1983. Debt limit bill passed Senate Nov. 16, 1983; amendment relating to War Powers deleted in conference Nov. 17, 1983.

## H.J.Res. 396 (Gonzalez)

To repeal Public Law 98-119, the Multinational Force in Lebanon, and to call for the removal of U.S. Armed Forces from Lebanon and Honduras. Introduced Oct. 24, 1983; referred to Committee on Foreign Affairs.

## H.J.Res. 402 (Zablocki)

Declares that the requirements of section 4(a)(1) of the War Powers Resolution became operative on Oct. 25, 1983, when U.S. armed forces were introduced into Grenada. Introduced Oct. 26, 1983; referred to Committee on Foreign Affairs. Ordered reported Oct. 27, 1983. Passed House Nov. 1, 1983.

## H.J.Res. 406 (Weiss)

To declare that President violated constitutional prerogative of Congress to declare war when he ordered invasion of Grenada, and require immediate withdrawal of armed forces from Grenada. Introduced Oct. 28, 1983. Referred to Committee on Foreign Relations.

## S.Res. 256 (Byrd)

Establish Senate factfinding mission to Grenada. Introduced Oct. 31, 1983; referred to Foreign Relations. Identical S. 257 introduced for immediate consideration without referral.

## S. 1692 (Hart)

Proposes War Powers in Central America Act, freezing at current levels U.S. military involvement in Central America, and permitting increase only after a joint resolution of Congress or after a written request by the President making clear that an increase is necessary to protect the lives of American citizens or respond to the danger of an attack on the United States. Introduced July 27, 1983; referred to Committee on Foreign Relations.

## S. 1741 (Hart)

A bill to halt the introduction of U.S. combat units into Central America without the approval of Congress. Introduced Aug. 3, 1983; referred to Committee on Foreign Relations.

## S. 1906 (Cranston)

To amend the War Powers Resolution to make rules governing certain uses of the Armed Forces of the United States in the absence of a declaration of war

by the Congress. Introduced Sept. 29, 1983; referred to Committee on Foreign Relations.

S. 2030 (Goldwater)

To repeal the War Powers Resolution. Introduced Oct. 31, 1983; referred to Committee on Foreign Relations.

S.J.Res. 186 (Hart)

War Powers in Grenada Act. Finds that on Oct. 25, 1983, U.S. armed forces were introduced into hostilities in Grenada as provided for in sec. 4(a)(1) of the War Powers Resolution and requires the President to submit a report pursuant to that section. Introduced Oct. 26, 1983; referred to Committee on Foreign Relations.

S.J.Res. 187 (Melcher)

To repeal the Multilateral Force in Lebanon Resolution. Introduced Oct. 28, 1983. Referred to Committee on Foreign Relations. Hearings held Nov. 10 and 15, 1983.

S.J.Res. 190 (Eagleton)

To limit U.S. troops stay in Lebanon to 3 months and provide for periodic review and authorization by Congress. Introduced Oct. 28, 1983. Referred to Committee on Foreign Relations. Hearings held Nov. 10 and 15.

### HEARINGS

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The War Powers Resolution; relevant documents, correspondence,  
reports. Washington, U.S. Govt. Print. Off., June 1981. 55 p.

U.S. Congress. House. Committee on Foreign Affairs. Multinational Force in Lebanon Resolution; report to accompany H.J.Res. 364. H.Rept. 98-385. Sept. 27, 1983. Washington, U.S. Govt. Print. Off., 1983. 26 p.

U.S. Congress. Senate. Committee on Foreign Relations. Multinational Force in Lebanon. Report to accompany S.J.Res. 159. S.Rept. 98-242. Sept. 26, 1983. Washington, U.S. Govt. Print. Off., 1983. 34 p.

#### CHRONOLOGY OF EVENTS

- 10/24/83 -- President Reagan reported "consistent with the War Powers Resolution" that U.S. forces had landed in Grenada.
- 10/23/83 -- More than 200 Marines were killed in Beirut in a car-bomb attack against the building near the airport where the Marines were housed.
- 09/29/83 -- Congress passed S.J.Res. 159 determining that the requirements of section 4(a)(1) of the War Powers Resolution had become operative on Aug. 29, 1983, for the Marines participating in the Multinational Force in Lebanon and authorizing the participation to continue for 18 months.
- 08/30/83 -- President Reagan sent a second report to Congress about the participation of U.S. armed forces in the multinational force in Lebanon, stating that the previous day Marine positions had come under fire and two Marines had been killed.
- 08/09/83 -- President Reagan reported under the War Powers Resolution the deployment of two AWACS electronic surveillance planes and eight F-15 fighter planes and ground logistical support forces to assist Chad against Libyan and rebel forces.
- 07/06/83 -- The Supreme Court summarily affirmed the decision of the D.C. Court of Appeals striking down a two-House legislative veto in the Federal Trade Commission Improvement Act of 1980.
- 06/23/83 -- The Supreme Court struck down the legislative veto device in the case of Immigration and Naturalization Service v. Chadha using reasoning that called into question any legislative veto not utilizing the full legislative process, including one but not all provisions of the War Powers Resolution.
- 03/09/83 -- Representative George Crockett filed an appeal of Crockett v. Reagan in the U.S. Court of Appeals for the District of Columbia.
- 10/04/82 -- U.S. District Court Judge Joyce Hens Green dismissed the suit Crockett v. Reagan, filed by

eleven members of Congress on May 1, 1981, contending that the President had violated the War Powers Resolution in sending additional military advisers to El Salvador. The Court ruled that the political branches must resolve the facts as to whether U.S. forces were engaged in hostilities in El Salvador.

- 09/29/82 -- President Reagan reported under the War Power Resolution the dispatch of 1,200 Marines to Lebanon to serve in a new multinational force formed to help maintain order in Lebanon.
- 08/21/82 -- President Reagan reported under the War Powers Resolution the dispatch of 800 Marines to participate in the multinational force assisting the evacuation of Palestine Liberation Organization members from Beirut, Lebanon.
- 03/19/82 -- President Reagan reported the deployment of military personnel and equipment to the Multinational Force and Observers in the Sinai under Section 4(a)(2) of the War Powers Resolution.
- 12/29/81 -- S.J.Res. 100, the Multinational Force and Observers Participation Resolution, was signed into law (P.L. 97-132), authorizing U.S. participation in the Sinai multinational force, but stating that the new resolution was not to affect the operation of the War Powers Resolution.
- 04/06/81 -- Assistant Secretary for Congressional Relations Richard Fairbanks wrote chairmen of the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations, describing duties of the U.S. military mission in El Salvador and "to assure that the requirements of the War Powers Resolution will be complied with in a timely manner should they become applicable."
- 04/26/80 -- President Carter reported, pursuant to Sec. 4(a)(1) of the War Powers Resolution, the use of armed forces in an attempt to rescue American hostages from Iran.
- 05/15/75 -- President Ford reported, pursuant to Sec. 4(a) the War Powers Resolution, the use of military forces to rescue the crew of the Mayaguez.
- 04/30/75 -- President Ford reported, pursuant to the War Powers Resolution, the use of armed forces in the evacuation of U.S. citizens and others from South Vietnam.
- 04/12/75 -- President Ford reported, pursuant to the War Powers Resolution, the use of armed forces in the evacuation of U.S. nationals from Cambodia.
- 04/04/75 -- President Ford reported, pursuant to the War Powers Resolution, the use of armed forces in the evacuation

of refugees from Danang.

11/07/73 -- Congress passed the War Powers Resolution over the veto of President Nixon.

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