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

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-547

WAR POWERS

OCTOBER 4, 1973.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.J. Res. 542]

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

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

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

SHORT TITLE

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

PURPOSE AND POLICY

SEC. 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 decla-

ration 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 nayes.

(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 where 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 resolution; or

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

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

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

(d) Nothing in this joint resolution—

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

(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 abence of this joint resolution.

SEPARABILITY CLAUSE

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

EFFECTIVE DATE

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

And the Senate agree to the same.

CLEMENT J. ZABLOCKI,
THOMAS E. MORGAN,
WAYNE L. HAYS,
DONALD FRASER,
DANTE B. FASCELL,
PAUL FINDLEY,
WM. BROOMFIELD,
Managers on the Part of the House.

J. W. FULBRIGHT,
MIKE MANSFIELD,
STUART SYMINGTON,
EDMUND S. MUSKIE,
G. AIKEN,
CLIFFORD P. CASE,
J. K. JAVITS,
Managers on the Part of the Senate

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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

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

SHORT TITLE

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

PURPOSE AND POLICY

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

The House joint resolution did not contain similar provisions.

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

(*a*) the purpose of the joint resolution is to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both 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*) Article I, section 8 of the Constitution provides the basis for congressional action in this area; and

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

declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Section 2(c) is a statement of the authority of the Commander-in-Chief respecting the introduction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances. Subsequent sections of the joint resolution are not dependent upon the language of this subsection, as was the case with a similar provision of the Senate bill (section 3).

CONSULTATION

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

REPORTING

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

CONGRESSIONAL ACTION

Both the House joint resolution and the Senate amendment provided for termination within a specified time of presidential use of United States Armed Forces without a declaration of war or specific prior statutory authorization. The termination period in the House joint resolution was 120 days; in the Senate amendment, 30 days.

The conferees agreed on a 60 day period following the forty-eight hour period in which the President is required to report under section 4. The 60-day period can be extended for up to 30 additional days if the President determines and certifies in writing to the Congress that unavoidable military necessity respecting the safety of the troops requires their continued use in bringing about a prompt disengagement from hostilities.

In section 5(a) the conferees accepted the provisions of the House joint resolution relating to the transmittal of the presidential report to Congress, with amendments which (1) provide for the possibility of reconvening of Congress in case of adjournment in order to consider such report, and (2) provide that 30 percent of the membership of the respective Houses may petition for such reconvening.

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

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

CONGRESSIONAL PRIORITY PROCEDURES

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

(1) language was added at the end of sections 6(a) and 7(a) allowing each House to change the procedures by the yeas and nays;

(2) the various time frames in section 6 for full cycle consideration of a joint resolution or bill were shortened to conform to the change in section 5(b) from 120 days to 60 days;

(3) following the reporting of a joint resolution or bill or concurrent resolution by the appropriate committee it was stipulated that the time for debate in the Senate shall be equally divided between the proponents and the opponents; and

(4) section 6(d) and section 7(d) provide for expedited conference committee procedures in the consideration of pertinent legislation passed by both houses.

TERMINATION OF CONGRESS

Section 7 of the House joint resolution provided a mechanism to insure that the time period provided for under section 4 of the joint resolution would not expire while Congress was in adjournment. The Senate amendment had no similar provision. The conference report does not contain the House provision on the grounds that the language

of section 5 of the conference report had obviated the need of this section.

INTERPRETATION OF JOINT RESOLUTION

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

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

(2) elimination of House language concerning the constitutional process requirement contained in mutual security treaties; and

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

SEPARABILITY CLAUSE

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

EFFECTIVE DATE

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

CLEMENT J. ZABLOCKI,
THOMAS E. MORGAN,
WAYNE L. HAYS,
DONALD FRASER,
DANTE B. FASCELL,
PAUL FINDLEY,
WM. BROOMFIELD,
Managers on the Part of the House.

J. W. FULBRIGHT,
MIKE MANSFIELD,
STUART SYMINGTON,
EDMUND S. MUSKIE,
G. AIKEN,
CLIFFORD P. CASE,
J. K. JAVITS,
Managers on the Part of the Senate.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-287

WAR POWERS RESOLUTION OF 1973

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

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

REPORT

TOGETHER WITH MINORITY AND SUPPLEMENTAL VIEWS

[To accompany H.J. Res. 542]

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

The amendments are as follows:

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

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

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

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

TERMINATION OF CONGRESS

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

83-006

On page 6, line 4, strike out "7" and insert in lieu thereof "8".

On page 6, line 16, strike out "hereof" and insert in lieu thereof "of this Act".

On page 6, immediately after line 16, insert the following:

APPLICABILITY TO CERTAIN EXISTING COMMITMENTS

SEC. 9. All commitments of United States Armed Forces to hostilities existing on the date of the enactment of this Act shall be subject to the provisions hereof, and the President shall file the report required by section 3 within seventy-two hours after the enactment of this Act.

On page 6, line 18, strike out "8" and insert in lieu thereof "10".

On page 6, lines 4 and 18, strike out "resolution" and insert in lieu thereof "Act".

BACKGROUND

On three occasions in the past two sessions of Congress, the House of Representatives has passed war powers legislation. In the 91st Congress a joint resolution reported by unanimous vote from the Committee on Foreign Affairs was adopted under suspension of the rules in the House by a vote of 288 to 39. The House-passed measure was sent to the Senate where, because of that body's failure to act, it died with the end of the 91st Congress.

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

ACTION IN THE 93D CONGRESS

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

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

Concerning the war powers of the Congress and the President.
- H.J. Res. 96—Pepper
- H.R. 2053—Matsunaga
- H.R. 4378—Gude
- H.J. Res. 498—du Pont

Governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
- H.R. 317—Bingham
- H.R. 4038—Nix
- H.R. 5669—Bingham
- H.R. 6424—Bingham et al.

Relating to the power of Congress to declare war.
- H.J. Res. 315—Leggett

Relating to the war power of the Congress.
- H.J. Res. 21—Danielson
- H.J. Res. 71—Chappell et al.
- H.J. Res. 72—Chappell et al.
- H.J. Res. 89—Matsunaga
- H.J. Res. 250—Dickinson
- H.J. Res. 271—Fuqua
- H.J. Res. 409—Chappell et al.
- H.J. Res. 448—Cronin

Relative to the commitment of U.S. Armed Forces.
- H. Res. 112—Rarick

To define the authority of the President of the United States to intervene abroad or to make war without the express consent of Congress.
- H.R. 3722—Sisk
- H.R. 4834—Nix

To make rules respecting military hostilities in the absense of a declaration of war.
- H.R. 926—Quie
- H.R. 2616—Railsback
- H.R. 2740—Tiernan

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
- H.R. 454—Dellenback
- H.R. 1454—Ullman
- H.R. 3139—Harrington
- H.R. 3333—Charles H. Wilson of Calif.
- H.R. 3408—Fish
- H.R. 3832—Mazzoli
- H.R. 4725—Sandman
- H.R. 4858—Ruppe
- H.R. 4966—Meeds
- H.R. 5455—Zwach
- H.R. 5594—Esch

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress of the United States or of a military attack upon the United States.
- H.R. 3046—Dennis et al.
- H.R. 4295—Rousselot
- H.R. 6318—Dennis et al.

Testifying were seven Members of the House, two Senators, a spokesman for the Department of State, and five private experts. Four markup sessions followed at which new language was drafted. A revised war powers resolution was ordered reported to the full committee by a vote of 9 to 1 on May 2. The following day the measure, House Joint Resolution 542, was introduced by the subcommittee chairman with 14 cosponsors, including Mr. Fountain, Mr. Fraser, Mr. Bingham, Mr. Fascell, Mr. Davis of Georgia, Mr. Charles Wilson of Texas, Mr. Findley, Mr. du Pont, Mr. Biester, Mr. Nix, Mr. Broomfield, Mr. Pepper, Mr. Hays, and Mr. Holifield. The committee considered the bill in markup on May 22, May 31, and June 7. The resolution was reported with amendments on the latter date by a vote of 31 to 4, with one member answering "present."

CONSTITUTIONAL CONTEXT

The Cambodian incursion of May 1970 provided the initial impetus for a number of bills and resolutions on the war powers. Many Members of Congress, including those who supported the action, were disturbed by the lack of prior consultation with Congress and

the near crisis in relations between the executive and legislative branches which the incident occasioned.

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

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

> 1. The Congress shall have power * * *
>
> * * * * * * *
>
> 11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
>
> 12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years;
>
> 13. To provide and maintain a Navy;
>
> 14. To make rules for the government and regulation of the land and naval forces;
>
> 15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
>
> 16. To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States;
>
> * * * * * * *
>
> 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the Government of the United States, or in any department or officer thereof.

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

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

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

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

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

THE INTENT AND EFFECT OF HOUSE JOINT RESOLUTION 542

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

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

1. Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of United States Armed Forces to hostilities or situations where hostilities may be imminent;
2. Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, or places or substantially increases U.S. combat forces on foreign territory;
3. Provides for a specific procedure of consideration by Congress when a Presidential report is submitted;
4. Denies to the President the authority to commit U.S. Armed Forces for more than 120 days without specific congressional approval, while also allowing the Congress to order the President to disengage from combat operations at any time before the 120-day period ends through passage of a concurrent resolution.
5. Stipulates a specific congressional priority procedure for consideration of any relevant bill or resolution which may be introduced—in other words, an antifilibuster provision; and
6. Specifies that the measure is in no way intended to alter the constitutional authority of the Congress or the President, or the provisions of existing treaties.

COST ESTIMATE

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and introductory clause

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

The word "concerning" was chosen because the resolution is merely intended to elaborate upon the application of the warmaking powers of the Congress and the President mentioned in the Constitution. By contrast with other war powers proposals, House Joint Resolution 542 does not attempt any itemized definition of the war powers.

Section 2. Consultation

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

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

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

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

A considerable amount of attention was given to the definition of *consultation*. Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice

and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

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

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

Section 3. Reporting

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

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

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

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

(2) Reporting is required when the President "*commits United States Armed Forces equipped for combat to the territory, airspace or waters of a foreign nation, except for deployments which relate solely to supply, replacement, repair or training of United States Armed Forces*". While subsection (1) refers to the commitment of U.S. troops to an area where armed conflict actually is in progress, subsection (2) covers the initial commitment of troops in situations in which there is no actual fighting but some

risk, however small, of the forces being involved in hostilities. A report would be required any time combat military forces were sent to another nation to alter or preserve the existing political status quo or to make the U.S. presence felt. Thus, for example, the dispatch of Marines to Thailand in 1962 and the quarantine of Cuba in the same year would have required Presidential reports. Reports would not be required for routine port supply calls, emergency aid measures, normal training exercises, and other noncombat military activities.

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

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

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

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

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

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions under the authority of which he took such action;

(C) the estimated scope of activities;

(D) the estimated financial cost of such commitment or such enlargement of forces; and

(E) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

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

Section 4. Congressional action

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

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

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

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

The language "* * * *shall jointly request*" makes clear that both the Speaker and President pro tempore would have to concur in the importance of and urgency of the situation covered in the report and in the desirability of asking the President to reconvene Congress. Yet, through use of the word "*shall*" the committee intended to convey its strong belief that reports dealing with situations of urgency and importance would obligate these two officials to request the President to reconvene Congress. In this connection the committee recognizes that the Constitution states clearly that only the President "may" reconvene Congress.

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

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

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

The language "* * * * *within one hundred and twenty calendar days* * * *" was used as a means of providing an adequate but fixed limitation on the period of the Presidential action. The Congress recognizes that the President has, from time to time, assumed a power to act from provision of treaties, laws, and resolutions as well as from the Constitution itself which do not constitute an explicit or specific authorization. This provision enables Congress to consider the necessity or wisdom of a President's action and to require the President to abandon such action if Congress is not persuaded that the action is in the interest of the United States, or to endorse the action if Congress believes it to be in the national interest. As is made clear in section 8 of the resolution, this provision is not to be construed as a grant of authority to the President to act for 120 days. Rather, it should be considered a specific time limitation upon any power to act assumed by the President from sources other than a specific authorization by Congress.

Nor should this limitation and the power contained in subsection (c) be interpreted as limiting the means now available to Congress and citizens to challenge the authority of the President to act.

The language "* * * *or is required to be submitted* * * *" takes into account a situation in which the President for whatever reason may decide not to submit a report. In that case, the 120-day period would begin after the 72-hour period referred to in section 3.

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

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

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

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

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

Sections 5 and 6. Congressional priority procedure

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

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

TIMING OF SECTION 5

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

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

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

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

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

Within 3 legislative days of being reported by committee in other body.—Legislation so reported shall become pending busi-

ness and shall be voted on unless such body shall otherwise determine by yeas and nays.

End of 120-day period.—Presidential action must stop unless previously sanctioned by Congress.

TIMING OF SECTION 6

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

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

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

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

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

Section 7. Termination of Congress

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

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

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

Section 8. Interpretation of act

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

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

The intent of subsection (b) is to state explicitly that nothing in the resolution "*shall be construed to represent congressional acceptance of the proposition that Executive action alone can satisfy the constitutional process requirement contained in the provisions of mutual security treaties to which the United States is a party.*"

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

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

Section 9. Applicability to certain existing commitments

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

Section 10. Effective date

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

USE OF A CONCURRENT RESOLUTION

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

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

Further, most of the important legislation enacted for the prosecution of World War II provided that the powers granted to the President would come to an end upon adoption of concurrent resolutions to that purpose. Among those acts were:

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

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

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

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

When the President commits U.S. Armed Forces to hostilities abroad on his own responsibility, he has, in effect, assumed congressional authority. Under this war powers resolution the Congress can rescind that authority as it sees fit by a concurrent resolution and thereby avoid the problem of a Presidential veto. The authority for the Congress to establish a legislative process for rescinding an assumed power to act on the part of the President can be found in Article 1, Section 8, of the Constitution through the "necessary and proper" clause.

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

Supplemental Views of Representatives Mailliard, Broomfield, Mathias, Guyer, and Vander Jagt

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

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

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

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

We should also consider the constitutionality of section 4(c), which would permit the Congress by a concurrent resolution to require the President to disengage U.S. Armed Forces from hostilities. We have no problem with the policy envisioned in section 4(c); namely that in exercising a shared constitutional power a majority of both Houses

of Congress should have the power to require the disengagement of Armed Forces committed to hostilities by the President without congressional approval.

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

WILLIAM S. MAILLIARD,
WILLIAM S. BROOMFIELD,
ROBERT B. (BOB) MATHIAS,
TENNYSON GUYER,
GUY VANDER JAGT.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES BUCHANAN AND WHALEN

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

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

Therefore, during the committee's markup of the resolution, we supported replacing the committee's language in section 4(b) with an amendment similar to the following:

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

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

JOHN BUCHANAN,
CHARLES W. WHALEN, JR.

Minority Views of Representatives Frelinghuysen, Derwinski, Thompson, and Burke

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

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

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

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

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

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

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

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

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

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

Proponents may argue that in such a situation Congress would recognize the necessity of declaring war, or of specifically authorizing the use of troops. As a practical matter, however, Congress does not

always move quickly and a legislative deadlock might develop. Moreover, in our opinion it is highly undesirable for Congress, through its own inaction, to be able to determine whether a course of Presidential action should be continued.

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

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

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

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

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

The proper and most useful role for Congress to play, in decisions of war and peace, cannot be developed through confrontation with the Executive. To function effectively, particularly in times of national crisis, our system of government must exhibit a maximum amount of cooperation between the two branches—executive and legislative. In the past such cooperation has been the means by which we have achieved successful policy decisions. It is to this end that we should be striving. House Joint Resolution 542 will not help—indeed, we believe it will seriously impede—the achievement of this objective.

PETER H. B. FRELINGHUYSEN,
EDWARD J. DERWINSKI,
VERNON W. THOMSON,
J. HERBERT BURKE.

○

THE WHITE HOUSE

WASHINGTON

May 14, 1975

MEMORANDUM FOR: Philip W. Buchen

FROM: Jay T. French

The paper clips mark those sections of the legislative history which deal with "consultations".

WAR POWERS RESOLUTION

P.L. 93–148, see page 614

House Report (Foreign Affairs Committee) No. 93–287, June 15, 1973 [To accompany H.J.Res. 542]

Senate Report (Foreign Relations Committee) No. 93–220, June 14, 1973 [To accompany S. 440]

House Conference Report No. 93–547, Oct. 4, 1973 [To accompany H.J.Res. 542]

Cong. Record Vol. 119 (1973)

DATES OF CONSIDERATION AND PASSAGE

House July 18, October 12, 1973

Senate July 20, October 10, 1973

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

HOUSE REPORT NO. 93–287

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

APPLICABILITY TO CERTAIN EXISTING COMMITMENTS

SEC. 9. All commitments of United States Armed Forces to hostilities existing on the date of the enactment of this Act shall be subject to the provisions hereof, and the President shall file the report required by section 3 within seventy-two hours after the enactment of this Act.

BACKGROUND

On three occasions in the past two sessions of Congress, the House of Representatives has passed war powers legislation. In the 91st Congress a joint resolution reported by unanimous vote from the Committee on Foreign Affairs was adopted under suspension of the rules in the House by a vote of 288 to 39. The House-passed measure was sent to the Senate where, because of that body's failure to act, it died with the end of the 91st Congress.

In the 92d Congress, the Committee on Foreign Affairs, again unanimously, reported House Joint Resolution 1 to the House. It was

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

ACTION IN THE 93D CONGRESS

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

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

Concerning the war powers of the Congress and the President.
- H.J. Res. 96—Pepper
- H.R. 2053—Matsunaga
- H.R. 4378—Gude
- H.J. Res. 498—du Pont

Governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
- H.R. 317—Bingham
- H.R. 4038—Nix
- H.R. 5669—Bingham
- H.R. 6424—Bingham et al.

Relating to the power of Congress to declare war.
- H.J. Res. 315—Leggett

Relating to the war power of the Congress.
- H.J. Res. 21—Danielson
- H.J. Res. 71—Chappell et al.
- H.J. Res. 72—Chappell et al.
- H.J. Res. 89—Matsunaga
- H.J. Res. 250—Dickinson
- H.J. Res. 271—Fuqua
- H.J. Res. 409—Chappell et al.
- H.J. Res. 448—Cronin

Relative to the commitment of U.S. Armed Forces.
- H. Res. 112—Rarick

To define the authority of the President of the United States to intervene abroad or to make war without the express consent of Congress.
- H.R. 3722—Sisk
- H.R. 4834—Nix

To make rules respecting military hostilities in the absense of a declaration of war.
- H.R. 926—Quie
- H.R. 2616—Railsback
- H.R. 2740—Tiernan

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress.
- H.R. 454—Dellenback
- H.R. 1454—Ullman
- H.R. 3139—Harrington
- H.R. 3333—Charles H. Wilson of Calif.
- H.R. 3408—Fish
- H.R. 3832—Mazzoli
- H.R. 4725—Sandman
- H.R. 4858—Ruppe
- H.R. 4966—Meeds
- H.R. 5455—Zwach
- H.R. 5594—Esch

To make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress of the United States or of a military attack upon the United States.
H.R. 3046—Dennis et al.
H.R. 4295—Rousselot
H.R. 6318—Dennis et al.

Testifying were seven Members of the House, two Senators, a spokesman for the Department of State, and five private experts. Four markup sessions followed at which new language was drafted. A revised war powers resolution was ordered reported to the full committee by a vote of 9 to 1 on May 2. The following day the measure, House Joint Resolution 542, was introduced by the subcommittee chairman with 14 cosponsors, including Mr. Fountain, Mr. Fraser, Mr. Bingham, Mr. Fascell, Mr. Davis of Georgia, Mr. Charles Wilson of Texas, Mr. Findley, Mr. du Pont, Mr. Biester, Mr. Nix, Mr. Broomfield, Mr. Pepper, Mr. Hays, and Mr. Holifield. The committee considered the bill in markup on May 22, May 31, and June 7. The resolution was reported with amendments on the latter date by a vote of 31 to 4, with one member answering "present."

CONSTITUTIONAL CONTEXT

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

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

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

1. The Congress shall have power * * *

* * * * * * *

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years;
13. To provide and maintain a Navy;
14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
16. To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States;

* * * * * * *

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

WAR POWERS RESOLUTION
P.L. 93–148

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

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

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

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

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

THE INTENT AND EFFECT OF HOUSE JOINT RESOLUTION 542

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

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

1. Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of United States Armed Forces to hostilities or situations where hostilities may be imminent;

2. Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, or places or substantially increases U.S. combat forces on foreign territory;

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

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

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

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

COST ESTIMATE

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and introductory clause

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

The word "concerning" was chosen because the resolution is merely intended to elaborate upon the application of the warmaking powers of the Congress and the President mentioned in the Constitution. By contrast with other war powers proposals, House Joint Resolution 542 does not attempt any itemized definition of the war powers.

Section 2. Consultation

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

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

At the same time, through use of the word "possible" it recognizes that a situation may be so dire, e.g. hostile missile attack under-

way, and require such instantaneous action that no prior consultation will be possible. It is therefore simultaneously *firm* in its expression of Congressional authority yet *flexible* in recognizing the possible need for swift action by the President which would not allow him time to consult first with Congress.

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

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

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

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

Section 3. Reporting

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

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

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

The language makes clear that the subsection applies to hostilities *outside* the territory of the United States, as opposed to at-

tacks directly upon, or *within*, the territory of the United States. This language implicitly recognizes the President's right to protect the United States against attacks by all enemies, foreign and domestic. There is no implication whatsoever that the resolution is intended to impair the President's authority to provide such defense.

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

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

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

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

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

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

(A) the circumstances necessitating his action;

(B) the constitutional and legislative provisions under the authority of which he took such action;

(C) the estimated scope of activities:

(D) the estimated financial cost of such commitment or such enlargement of forces; and

(E) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

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

Section 4. Congressional action

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

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

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

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

The language "* * * *shall jointly request*" makes clear that both the Speaker and President pro tempore would have to concur in the importance of and urgency of the situation covered in the report and in the desirability of asking the President to reconvene Congress. Yet, through use of the word "*shall*" the committee intended to convey its strong belief that reports dealing with situations of urgency and importance would obligate these two officials to request the President to reconvene Congress. In this connection the committee recognizes that the Constitution states clearly that only the President "may" reconvene Congress.

The language "* * * *that it may consider the report and take appropriate action* * * *" refers to the congressional action and procedures

outlined in section 4 (b) and (c) as well as sections 5 and 6, "Congressional Priority Procedure."

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

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

The language "* * * * *within one hundred and twenty calendar days* * * *" was used as a means of providing an adequate but fixed limitation on the period of the Presidential action. The Congress recognizes that the President has, from time to time, assumed a power to act from provision of treaties, laws, and resolutions as well as from the Constitution itself which do not constitute an explicit or specific authorization. This provision enables Congress to consider the necessity or wisdom of a President's action and to require the President to abandon such action if Congress is not persuaded that the action is in the interest of the United States, or to endorse the action if Congress believes it to be in the national interest. As is made clear in section 8 of the resolution, this provision is not to be construed as a grant of authority to the President to act for 120 days. Rather, it should be considered a specific time limitation upon any power to act assumed by the President from sources other than a specific authorization by Congress.

Nor should this limitation and the power contained in subsection (c) be interpreted as limiting the means now available to Congress and citizens to challenge the authority of the President to act.

The language "* * * *or is required to be submitted* * * *" takes into account a situation in which the President for whatever reason may decide not to submit a report. In that case, the 120-day period would begin after the 72-hour period referred to in section 3.

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

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

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

> The phrase "*shall be disengaged*" has as its antecedent the President's action of committing U.S. Armed Forces. The intent of the committee was simply that the President shall stop the action to which he has committed the forces by releasing the forces from the order which committed them, and removing them from the situation.
>
> The language "* * * *if the Congress so directs by concurrent resolution*" is the heart of subsection (c). It authorizes the use of a concurrent resolution to "veto" or disapprove an action of the President committing United States Armed Forces to hostilities. In effect, the joint resolution "endows" this concurrent resolution with the binding force of statute. Since the language applies to a situation where there is no congressional authorization for the President's action it thereby avoids the possibility of a Presidential veto—and resulting impasse—which would be possible on a bill or a joint resolution. A discussion of the use of a concurrent resolution for this purpose may be found on pages 13–14.

Sections 5 and 6. Congressional priority procedure

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

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

TIMING OF SECTION 5

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

> *Forty-five days before end of 120-day period.*—Bill or joint resolution must be introduced to be guaranteed protection of committee consideration.
>
> *Thirty days before end of 120-day period.*—One such resolution or bill must be reported out by committee.

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

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

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

End of 120-day period.—Presidential action must stop unless previously sanctioned by Congress.

TIMING OF SECTION 6

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

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

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

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

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

Section 7. Termination of Congress

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

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

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

Section 8. Interpretation of act

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

The intent of subsection (a) is to disclaim any intention of altering the constitutional grants of war powers to the legislative and executive branches. It thereby helps insure the constitutionality of the resolution by making it clear that nothing in it can be interpreted as changing in any way the powers delegated to each branch of govern-

ment by the Constitution. In addition, it reassures U.S. allies that passage of the resolution will not affect U.S. obligations under mutual defense agreements and other treaties to which the United States is a party.

The intent of subsection (b) is to state explicitly that nothing in the resolution "*shall be construed to represent congressional acceptance of the proposition that Executive action alone can satisfy the constitutional process requirement contained in the provisions of mutual security treaties to which the United States is a party.*"

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

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

Section 9. Applicability to certain existing commitments

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

Section 10. Effective date

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

USE OF A CONCURRENT RESOLUTION

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

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

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

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

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

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

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

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

When the President commits U.S. Armed Forces to hostilities abroad on his own responsibility, he has, in effect, assumed congressional authority. Under this war powers resolution the Congress can rescind that authority as it sees fit by a concurrent resolution and thereby avoid the problem of a Presidential veto. The authority for the Congress to establish a legislative process for rescinding an assumed power to act on the part of the President can be found in Article 1, Section 8, of the Constitution through the "necessary and proper" clause.

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

Supplemental Views of Representatives Mailliard, Broomfield, Mathias, Guyer, and Vander Jagt

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

It is our hope that as the House works its will, the Members will carefully scrutinize section 4 (b) and (c). In our opinion, section 4(b) is dangerous and perhaps unconstitutional. It would unwisely put into law a provision whereby the failure of the Congress to act could force Presidential action with major national and international implications. Specifically, section 4(b) requires that within 120 calendar days

after a report is submitted or required to be submitted pursuant to section 3, the President shall terminate any commitment and remove any enlargement of U.S. Armed Forces with respect to which such report was submitted, unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces. In our opinion, the Congress ought to exercise its powers in a positive way and not have major consequences ensue from the inaction of the Congress.

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

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

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

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

WILLIAM S. MAILLIARD,
WILLIAM S. BROOMFIELD,
ROBERT B. (BOB) MATHIAS,
TENNYSON GUYER,
GUY VANDER JAGT.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES BUCHANAN AND WHALEN

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

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

Therefore, during the committee's markup of the resolution, we supported replacing the committee's language in section 4(b) with an amendment similar to the following:

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

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

JOHN BUCHANAN,
CHARLES W. WHALEN, JR.

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

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

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

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

What is most ironic is that this joint resolution, constructed as it is with an eye to our unfortunate experiences during the mid-1960's, would not have prevented our steadily deepening involvement in Vietnam, had it been on the books 10 years ago. For example, there is no reason to believe that Congress after the Gulf of Tonkin incident

would have refused to approve Presidential action through the mechanism provided in this measure. Congress at the time would have declared war, had that been requested, or we would have specifically authorized the use of our Armed Forces.

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

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

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

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

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

This effort to limit the President's power—by the failure of Congress to take affirmative action—strikes us as highly dangerous. For

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

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

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

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

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

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

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

The proper and most useful role for Congress to play, in decisions of war and peace, cannot be developed through confrontation with the Executive. To function effectively, particularly in times of national crisis, our system of government must exhibit a maximum amount of cooperation between the two branches—executive and legislative. In the past such cooperation has been the means by which we have achieved successful policy decisions. It is to this end that we should be striving. House Joint Resolution 542 will not help—indeed, we believe it will seriously impede—the achievement of this objective.

PETER H. B. FRELINGHUYSEN,
EDWARD J. DERWINSKI,
VERNON W. THOMSON,
J. HERBERT BURKE.

CONFERENCE REPORT NO. 93-547

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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

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

SHORT TITLE

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

PURPOSE AND POLICY

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

The House joint resolution did not contain similar provisions.

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

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

by the full committee in the bill, the amount of my proposed amendment and, finally, the figure for the items covered if my package of amendments should be adopted.

PROPOSED AMENDMENT TO WAR POWERS RESOLUTION

(Mr. DENNIS asked and was given permission to address the House for 1 minute, and to revise and extend his remarks and include extraneous material.)

Mr. DENNIS. Mr. Speaker and Members of the House, when we consider the war powers resolution, House Joint Resolution 542, on Wednesday afternoon under the 5-minute rule, I intend to offer as an amendment, in the nature of a substitute, a war powers bill which I have drawn which would differ in several important respects from that resolution, notably in the fact that under my bill an affirmative vote on the part of the Congress would be necessary in order to require the President to terminate hostilities abroad rather than permitting the expiration of a time by inaction on our part which would bring such hostilities to a close.

Mr. Speaker, I insert in the RECORD at this point my proposed amendment:

AMENDMENT OFFERED BY MR. DENNIS IN THE NATURE OF A SUBSTITUTE TO THE BILL, HOUSE JOINT RESOLUTION 542, AS REPORTED

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. In the absence of a declaration of war by the Congress or of a military attack upon the United States, its territories or possessions, the Armed Forces of the United States shall not be committed to combat or introduced into a situation where combat is imminent or likely at any place outside of the United States, its territories and possessions, without prior notice to and specific prior authorization by the Congress, except in case of emergency or necessity, the existence of which emergency or necessity is to be determined by the President of the United States.

SEC. 2. Whenever, in the absence of a declaration of war by the Congress or of a military attack upon the United States, its territories or possessions, the President of the United States nevertheless determines that an emergency or necessity exists which justifies such action, and shall, by consequence, commit the Armed Forces of the United States to combat or shall introduce them into a situation where combat is imminent or likely at any place outside of the United States, its territories or possessions, without prior notice to and authorization by the Congress, as is provided and authorized in such cases under and pursuant to the provisions of section 1 of this Act, the President shall report such action to the Congress in writing, as expeditiously as possible and, in all events, within twenty-four hours from and after the taking of such action. Such report shall contain a full account of the circumstances under which such action was taken and shall set forth the facts and circumstances relied upon by the President as authorizing and justifying the same. In the event the Congress is not in session the President shall forthwith convene the Congress in an extraordinary session and shall make such report to the Congress as expeditiously as possible and, in all events, within forty-eight hours from and after the taking of such action.

SEC. 3. Not later than ninety days after the receipt of the report of the President provided for in section 2 of this Act, the Congress, by the enactment within such period of a bill or resolution appropriate to the purpose, shall either approve, ratify, confirm, and authorize the continuation of the action taken by the President and reported to the Congress, or shall disapprove and require the discontinuance of the same.

SEC. 4. If the Congress, acting pursuant to and under the provisions of section 3, shall approve, ratify, and confirm and shall authorize the continuation of the action taken by the President and so reported to the Congress, the President shall thereafter report periodically in writing to the Congress at intervals of not more than six months as to the progress of any hostilities involved and as to the status of the situation, and the Congress shall, within a period of thirty days from and after the receipt of each such six-month report, again take action by the enactment of an appropriate bill or resolution, to either ratify, approve, confirm, and authorize the continuation of the action of the President, including any hostilities which may be involved, or to disapprove and require the discontinuance of the same.

SEC. 5. If the Congress shall at any time, acting under the provisions of section 3 or section 4, disapprove the action of the President and require the discontinuance of the same, then the President shall discontinue the action so taken by him and so reported to the Congress, and shall terminate any hostilities which may be in progress and shall withdraw, disengage, and redeploy the Armed Forces of the United States which may be involved, just as expeditiously as may be possible having regard to, and consistent with, the safety of the Armed Forces of the United States, the necessary defense and protection of the United States, its territories and possessions, the safety of citizens and nationals of the United States who may be involved, and the reasonable safety and necessities, after due and reasonable notice, of allied or friendly nationals and troops.

SEC. 6. For the purposes of this Act the Panama Canal Zone shall be taken and deemed to be a territory or possession of the United States.

SEC. 7. Nothing contained in this Act shall alter or abrogate any obligation imposed on the United States by the provisions of any treaty to which the United States is presently a party.

SEC. 8. If any provision of this Act or the application thereof to any particular circumstance or situation is held invalid, the remainder of this Act, or the application of such provision to any other circumstance or situation, shall not be affected thereby.

SEC. 9. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act.

CALL OF THE HOUSE

Mr. WYDLER. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. McFALL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 272]

Abdnor	Eckhardt	Mills, Ark.
Adams	Fisher	Minish
Anderson, Calif.	Flynt	Moorhead,
Andrews, N.C.	Ford,	Moss
Ashbrook	William D.	Murphy, N
Badillo	Gibbons	O'Neill
Beard	Gray	Patman
Bell	Gross	Pepper
Blatnik	Gubser	Powell, O
Breaux	Guyer	Price, Tex
Burke, Calif.	Hanna	Reid
Burlison, Mo.	Heinz	Rodino
Chisholm	Hogan	Rooney, N
Clark	Ichord	Ryan
Danielson	Jarman	Stokes
Davis, S.C.	Jordan	Thompson
Delaney	Landrum	Wiggins
Dellums	McCormack	Young, A
Derwinski	McKinney	
Diggs	Maraziti	

The SPEAKER. On this rollca Members have recorded their pre by electronic device, a quorum.

By unanimous consent, further ceedings under the call were disp with.

CONFERENCE REPORT ON 7447, SUPPLEMENTAL APPRO TIONS, 1973

Mr. MAHON. Mr. Speaker, I c the conference report on the bill 7447) making supplemental appr tions for the fiscal year ending Ju 1973, and for other purposes, ar unanimous consent that the statem the managers be read in lieu report.

The Clerk read the title of the

The SPEAKER. Is there objec the request of the gentleman Texas?

There was no objection.

The Clerk read the statement.

(For conference report and stat see proceedings of the House of Ju 1973.)

The SPEAKER. The gentlema Texas is recognized for 30 minute

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, unanimous consent that all Mem the House may have 5 legislative which to revise and extend their r in the RECORD in regard to the p conference report on the supple appropriation bill and also on the amendments in disagreemer that all Members may have per to insert tables and extraneous in connection with their remarks

The SPEAKER. Is there objec the request of the gentleman Texas?

There was no objection.

Mr. MAHON. Mr. Speaker, I going to try to make a dramatic but what I am about to say is sig and important and it relates to w conferees have done on this bill what all of us as Members of th gress have done on appropriati since the current fiscal year 197 on July 1, 1972.

This bill is for about $3.3 billi as large as the $32 billion Labo bill which will be before us tomor it seems to me it does merit di and explanation.

SEC. 103. The Commission is authorized to perform construction design services for any Commission construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Commission and (2) the Commission determines that the project is of such urgency that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

SEC. 104. When so specified in an appropriation Act, transfers of amounts between "Operating expenses" and "Plant and capital equipment" may be made as provided in such appropriation Act.

SEC. 105. AMENDMENT OF PRIOR YEAR ACTS.—(a) Section 101 of Public Law 91-273, as amended, is further amended by (1) striking from subsection (b)(1), project 71-1-e, gaseous diffusion production support facilities, the figure "$72,020,000" and substituting therefor the figure "$105,900,000", (2) striking from subsection (b)(1), project 71-1-f, process equipment modifications, gaseous diffusion plants, the figure "$34,400,000" and substituting therefor the figure "$172,100,000", and (3) striking from subsection (b)(9), project 71-9, fire, safety, and adequacy of operating conditions projects, various locations, the figure "$69,000,000" and substituting therefor the figure "$193,000,000".

(b) Section 106 of Public Law 91-273, as amended, is further amended by adding the following sentence at the end of the present text of subsection (a) thereof:

"Notwithstanding the foregoing, authorization of additional appropriations for the conduct of Project Definition Phase activities subsequent to the execution of the aforementioned cooperative arrangement, in the amount of $2,000,000, is hereby authorized.".

(c) Section 101 of Public Law 92-314 is amended by (1) striking from subsection (b)(1), project 73-1-d, component test facility, Oak Ridge, Tennessee, the figure "$20,475,000" and substituting therefor the figure "$26,675,000", and (2) striking from subsection (b)(5), project 73-5-h, S8G prototype nuclear propulsion plant, West Milton, New York, the figure "$56,000,000" and substituting therefor the figure "$125,000,000".

SEC. 106. RESCISSION.—(a) Public Law 91-273, as amended, is further amended by rescinding therefrom authorization for a project, except for funds heretofore obligated, as follows:

Project 71-5-a, addition to physics building (human radiobiology facility), Argonne National Laboratory, Illinois, $2,000,000.

(b) Public Law 92-314 is amended by rescinding therefrom authorization for a project, except for funds heretofore obligated, as follows:

Project 73-1-l, radioactive solid waste reduction facility, Los Alamos Scientific Laboratory, New Mexico, $750,000.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 8662) was laid on the table.

GENERAL LEAVE

Mr. PRICE of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PERSONAL EXPLANATION

Mr. PEPPER. Mr. Speaker, with regard to rollcall No. 273, I was detained on official business and did not return until after the vote was taken.

Had I been present, I would have voted "aye."

Also, Mr. Speaker, on rollcall No. 274, I was again detained on official business and did not return until the vote was taken.

Had I been present, I would have voted "no."

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

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 456 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 456

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President. After general debate, which shall be confined to the joint resolution and shall continue not to exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, the joint resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution and amendments thereto to final passage without intervening motion except one motion to recommit.

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

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

Mr. Speaker, House Resolution 456 provides for an open rule with 3 hours of general debate on House Joint Resolution 542, a resolution concerning the war powers of Congress and the President.

The joint resolution provides that the President make a formal report to the Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant military action, by either the commitment of U.S. Armed Forces to hostilities outside the United States, the commitment of combat-equipped U.S. forces to any foreign nation, or the substantial enlargement of combat-equipped U.S. forces already in a foreign nation.

House Joint Resolution 542 also denies to the President the authority to commit U.S. Armed Forces for more than 120 days without specific congressional approval.

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

Mr. Speaker, the framers of the Constitution were explicit in their desire that the ultimate warmaking powers be in the hands of the Congress, the representatives of the people.

This is a salutary proposal. I commend the distinguished Committee on Foreign Affairs, after long deliberations on the subject, for bringing forth this resolution to be considered by the House.

I therefore urge the adoption of House Resolution 456 in order that we may discuss and debate this very important measure, House Joint Resolution 542.

Mr. MARTIN of Nebraska. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, as the gentleman from Florida has explained, House Resolution 456 provides for an open rule and 3 hours of debate on House Joint Resolution 542, the war powers resolution of 1973.

The resolution directs the President to consult with the Congress before and during the commitment of U.S. forces to hostile situations.

This resolution requires the President to report to the Congress within 72 hours whenever, without specific congressional authorization, he commits U.S. forces to hostile situations, or places, or substantially increases U.S. forces on foreign soil.

Section 4(b) provides that within 120 days after the report is submitted the President is to terminate any commitment of U.S. troops covered by the report unless Congress specifically authorizes the commitment.

Congress is also allowed to order the President to disengage from combat operations at any time before the 120-day period ends through passage of a concurrent resolution. Generally a concurrent resolution does not require a signature by the President.

I should like to analyze very quickly and briefly, Mr. Speaker, some of the provisions in this joint resolution.

First of all, it requires the President to report within 72 hours to the House and Senate in respect to hostile action by the U.S. military. Then the resolution sets forth five different reasons which the President must report in writing explaining his actions.

One of these is as follows: The estimated financial cost of such commitment or such enlargement of forces.

Mr. Speaker, it is virtually impossible for the President or any other individual to make an estimate as to the cost of future activities in this area. This is just one of the weaknesses in this bill.

Then it provides in section 4(b) that within 120 calendar days after a report is submitted or is required to be submitted, pursuant to section 3, the President shall terminate any commitment or remove any enlargement of the Armed Forces overseas.

Mr. Speaker, I note that the bill says:

Within 120 calendar days after a report is submitted or is required.

Evidently the authors of this legislation are not sure the President will comply with it. Evidently the authors of this bill are not sure that the President constitutionally has to respond to this action by the Congress itself, because they

have put in the phrase, "or is required to be submitted."

Mr. Speaker, let us take a look at section 4(c). It states as follows:

Notwithstanding subsection (b), at any time that the 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 other specific authorization of the Congress, such forces shall be disengaged by the President if the Congress so directs by concurrent resolution.

The Commission on Rules, Mr. Speaker, has held extensive hearings on the impoundment legislation. This legislation on which we have held our hearings was authorized by the gentleman from Texas (Mr. MAHON), the chairman of the Committee on Appropriations. Senator ERVIN, one of the foremost authorities in Congress on the Constitution, testified before our committee.

The bill of the gentleman from Texas (Mr. MAHON) has a similar provision in regard to a concurrent resolution countermanding the impoundment of funds by the President. It states that if the funds are impounded and the Congress acts within 60 days, with a concurrent resolution, the funds would immediately be released.

Mr. Speaker, I questioned Senator ERVIN on this point. Let me read from the colloquy I had with Senator ERVIN on the day that he testified. This is Mr. Martin speaking:

Senator, the legislation which we have before us today provides for a concurrent resolution to be passed by the Congress if we wish to override or disagree with impoundment of funds. I would like to quote from Jefferson's Manual in regard to the House:

"A concurrent resolution is binding on neither House until agreed to by both. Since not legislative in nature it is not sent to the President for approval."

Then I proceed as follows:

Then I would like to quote from Cannon's Precedents of the House:

This is volume 7, page 150:

"A concurrent resolution is without force and effect beyond the confines of the Capitol."

Then I proceed as follows:

Then I would like to quote from section 7, article I of the Constitution, which I think you referred to, and it states as follows:

Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary, except on the question of adjournment, shall be presented to the President of the United States and before the same shall take effect shall be approved by him or being disapproved by him shall be repassed by two-thirds of the Senate and House of Representatives.

The legislation we have before us providing for a concurrent resolution does not provide nor give to the President the power to veto. It seems to me it is in violation of Cannon's Precedents of the House and the Constitution itself.

Senator ERVIN. It is because it has legislative effect. That is what it is designed to have. You cannot pass a resolution which is not subject to the Presidential veto which has legislative effect. This certainly has legislative effect.

Mr. MARTIN of Nebraska. Then, in your opinion, the President would have the power to veto a concurrent resolution action by the Congress?

Senator ERVIN. That is right. That would be the second time he would have a chance to veto the same proposition really.

The SPEAKER. The time of the gentleman has again expired.

Mr. MARTIN of Nebraska. Mr. Speaker, I yield myself 2 additional minutes.

Consequently, Mr. Speaker, you can see that section 4C does not have much substance as far as the Constitution is concerned and as far as Senator ERVIN's testimony before our committee on impoundment legislation is concerned.

Mr. FRELINGHUYSEN. Will the gentleman yield to me on that point?

Mr. MARTIN of Nebraska. I yield to the gentleman.

Mr. FRELINGHUYSEN. As a member of the Committee on Foreign Affairs, I would like to congratulate the gentleman for pointing out some of the weaknesses in the language and provisions of the joint resolution.

With respect to the concurrent resolution proposal, the pros and cons and the wisdom and constitutionality of that provision were discussed in the committee. It should be pointed out at the outset of this discussion—and I hope we have a reasonable discussion—that the reason for the concurrent resolution was an awareness on the part of the proponents that if a joint resolution were the mechanism with which to express disapproval, the President would have to participate.

This is a deliberate attempt to bypass the necessity of an operation which would be legislative in effect. The assumption is a situation which involves a President who would be presumably in an opposite camp, opposing what the Congress is trying to do. It is this aspect of the resolution which disturbs me most of all. The feeling is that there has to be independence from the President with respect to these judgments. However, the very confrontation which is being invited by sections 4B and 4C are likely to provoke a situation involving the basic constitutionality of what is being attempted. It surely is not eliminating any of the problems that presently exist with respect to the relationship between the executive and the legislative branches.

The SPEAKER. The time of the gentleman has again expired.

Mr. MARTIN of Nebraska. Mr. Speaker, I yield myself 2 additional minutes.

I yield further to the gentleman.

Mr. FRELINGHUYSEN. The colloquy between you and Senator ERVIN points up the weaknesses of the concurrent resolution.

But I do want to point out a concurrent resolution is proposed for a specific reason, namely, to avoid the necessity for Presidential involvement in the process of expressing disapproval of a Presidential action.

Mr. MARTIN of Nebraska. I appreciate the gentleman's remarks, and I believe he is exactly right. I think this will raise more constitutional questions than we have at the present time.

Mr. WOLFF. Will the gentleman yield?

Mr. MARTIN of Nebraska. I yield very briefly to the gentleman.

Mr. WOLFF. I refer the gentleman to the committee report. I am also a member of the Committee on Foreign Affairs, as was the gentleman who preceded me. In the report the use of a concurrent resolution is discussed at length. It evidences how, during World War II, this device was used on the Lend-Lease Act, the Price Control Act, the War Labor Act, and so forth. So that the device of concurrent resolution has been used in the past constitutionally and effectively.

Mr. FRELINGHUYSEN. Will the gentleman yield again on that point?

Mr. MARTIN of Nebraska. I yield to the gentleman.

Mr. FRELINGHUYSEN. I might say the illustrations used in the committee report with respect to concurrent resolutions involve powers granted by the Congress to the President during a time of hostilities with the proposal that those powers can be terminated by concurrent resolution. Here we are talking about the constitutional power of the President. This is an attempt to deny or abrogate that power.

So the situation with respect to the concurrent resolutions developed during a war-time period is quite different from their attempt to curtail Presidential power over the disposition of troops as the Commander in Chief.

Mr. MARTIN of Nebraska. I appreciate the gentleman from New Jersey pointing that out.

Mr. FINDLEY. Mr. Speaker, will the gentleman yield?

Mr. MARTIN of Nebraska. I yield to the gentleman from Illinois.

Mr. FINDLEY. Mr. Speaker, I think that the gentleman from Nebraska (Mr. MARTIN) is rendering a service in pointing to the concurrent resolution provision on the war powers legislation now before us. I assume, however, that the gentleman has no objection to the form of the rule that is now pending. Am I correct on that point?

Mr. MARTIN of Nebraska. I am not objecting to the rule. I want the House to be able to work its will, and to debate this matter carefully and they will have 3 hours in which to do that.

Mr. FINDLEY. I appreciate the clarification, because there is quite an extensive set of precedents which support the use of concurrent resolutions. The precedents go well beyond those cited in the committee report; they are very extensive. We have broad scholarly support for this position. But, Mr. Speaker, I think it would be more appropriate for me to reserve discussion on that until we are in the Committee of the Whole in order to have a more extended time to debate it.

Mr. MARTIN of Nebraska. I would suggest that the gentleman from Illinois withhold his remarks on these matters until we are in the Committee of the Whole.

Mr. DU PONT. Mr. Speaker, will the gentleman yield?

Mr. MARTIN of Nebraska. I yield to the gentleman from Delaware.

Mr. DU PONT. Mr. Speaker, I do not want to prolong the debate on the rule, but I do think the gentleman from New Jersey misstates the constitutional argu-

ment very seriously as to what power is delegated by whom. The war power rests in the Congress, and that is why we can use a concurrent resolution, and the Presidential power is not involved when it comes to war making. I will expand on that further when we get into the general debate during the Committee of the Whole. But I do want to add that the gentleman from New Jersey (Mr. FRELINGHUYSEN) was here and voted for the Gulf of Tonkin Resolution—I am sorry, I do not know whether the gentleman voted for or against the Gulf of Tonkin Resolution—but the gentleman was here when the debate was going on on the Gulf of Tonkin Resolution which included a concurrent resolution repealer, and there was no debate in the House of Representatives as to whether that was constitutional or not. So, we have plowed this ground many times before, and I do not think we have a prima facie case so far as constitutional interpretation is concerned.

Mr. MARTIN of Nebraska. Mr. Speaker, I would hope that this debate would be deferred until after the rule is adopted.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, I rise in support of the rule.

Mr. Speaker, I think the House Foreign Affairs Committee is to be commended on bringing to this body what is basically a sound and strong war powers bill. I have felt for some time now that the Congress must take affirmative action to in this area, especially in view of our tragic Vietnam experience. On May 23 of this year I introduced my own war powers bill, H.R. 8066, the Defense Emergency Procedures Act of 1973.

Like the Zablocki bill, my bill would require prior consultation between the President and Congress on committing American forces overseas, would require that President to make a full report in writing to the Congress when forces are committed, and would provide procedures whereby the Congress could approve or disapprove that action. Unlike the Zablocki bill, my bill would have terminated the President's authority to use troops without specific authorization after 90 days instead of 120 days, would require that early termination of the President's authority could only be achieved by enactment of a bill or joint resolution rather than by passage of concurrent resolution, and would have established a new Joint Committee on National Security to consult with the President on decisions to commit troops and to advise the appropriate committees of Congress with respect to related legislation.

While a good part of our debate will be consumed today and on Wednesday in discussing the proper mechanics of a war powers bill, the truly important aspect of this whole exercise, it seems to me, is that the Congress is now willing to face up to its war powers responsibilities under article I of the Constitution by prescribing certain guidelines and procedures for the Congress and the President to follow in those situations in which we are committed to hostilities without a clear declaration of war. Such situations were not anticipated to be a problem when our Constitution was originally written, but with the advent of the nuclear age, the so-called undeclared war has become more the exception than the rule due to both modern diplomatic and technological realities and developments. These same realtities and developments have given rise to the strong chief executive in the conduct of foreign policy and response to internanational military crises.

But the protracted conflict in Indochina and its consequences have given us good cause to reassess the wisdom in arrogating so much power to one person without the participation of the legislative branch in decisions which may involve a major and prolonged commitment. In my testimony before the House Foreign Affairs Committee in July of 1970 on war powers legislation I noted the growing unease and alarm pervading the general public and the Congress over this imbalance between the President and Congress. To quote from that testimony:

> This sudden upsurge of concern, of course, is not difficult to explain: it is the direct product of a long, bitter, divisive war which has been almost exclusively an Executive undertaking. If the traumatic Vietnam experience teaches us anything, it is that such heavy commitments of American blood and treasure must have strong democratic sanction if they are to be sustained, they cannot be entered into by stealth, dissumulation, and deliberate ambiguity on the part of the Executive . . . We simply cannot afford to undertake another major commitment in which we begin to falter in midcourse because of public confusion over the purposes and legitimacy of Executive initiated actions.

I think those words ring just as true today and explain the basic need for the type of legislation which we are today considering. The time has come to right that imbalance in a responsible manner and to reinvolve the Congress in the war making process. I think the American people fully expect this of us and I think we owe it to the American people after what we have just gone through.

Mr. MARTIN of Nebraska. Mr. Speaker, I support the rule, and urge its adoption.

Mr. FISH. Mr. Speaker, today we are debating not only a piece of legislation but a principle. We are called upon to determine whether or not the institution of the Congress has the will to recapture its proper constitutional role with respect to warmaking.

The history of a President engaging in military operations without direct congressional authorization can be traced back to Andrew Jackson. But these occurrences have become frighteningly common since World War II, spurred by the cold war, and the expansion of our defense role throughout the world. As Henry Steele Commanger has noted:

> Five times in the past ten years Presidents have mounted major military interventions in foreign nations without prior consultations with the Congress.

It is not necessary to belabor the sad history of this country's involvement in Indochina. Had our recent history been different, this legislation would still be needed. It will assure deliberation over our purpose militarily and it will provide the mechanism for insuring unity if that purpose is warranted. The time has come for Congress to reaffirm and clarify its powers regarding the commitment of U.S. forces to any armed conflict, as the framers of the Constitution so clearly intended. We are not assuming in this bill an initiative or a prerogative of the executive. Rather, we are implementing our function which is to oversee government.

As reported by the House Committee on Foreign Affairs, House Joint Resolution 542 does not restrict the President's flexibility to deal with an emergency military situation. This is important. As Commander in Chief he has the responsibility to repel an attack on the United States. Wisely, the bill speaks only to commitments to hostilities abroad. It requires that the President report to Congress within 72 hours after he commits U.S. Armed Forces to hostilities abroad, where there has been no prior specific congressional authorization. Furthermore, the resolution states that unless Congress enacts a declaration of war or a specific authorization for use of U.S. Armed Forces within 120 days after the submission of the report, then the President must terminate all such activities.

Mr. Speaker, it is important that the House of Representatives accept the principle of war powers legislation. The procedures for a congressional role contained in this resolution are reasonable, workable, and acceptable. It is an implementation of the Constitution not a change in our basic law.

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

Ms. ABZUG. Mr. Speaker, I join in appealing to my colleagues to follow up their historic vote of May 10 by approving today a total ban on the use of any funds to finance American bombing in Cambodia and Laos.

When the House took its unprecedented action last month it was responding to the overwhelming desire of the American people to end once and for all U.S. military intervention in Indochina.

Our vote was limited to a denial of a request by the Department of Defense for "transfer authority" to use funds to pay for military activities in and over Laos and Cambodia, but the significance of our action was clear to the entire world. For the first time this body had acted in a decisive way to say no to the administration's policy of massive terror bombing in a distant and tiny Southeast Asian land.

During the debate last month there were some expressions of concern that a stand by the House at that point might undercut Henry Kissinger in his negotiations in Paris. The Paris talks have come and gone, and we have heard Mr. Kissinger's declaration that there is nothing in the new agreement that commits

the United States to cease the Cambodian bombing.

We also have heard the testimony on June 18 of James R. Schlesinger, the proposed new Secretary of Defense, who defended the bombing as necessary. He also made the arrogant claim that the bombing in Cambodia lies within the constitutional authority of the President, a statement for which there is no basis in fact. Mr. Schlesinger also held out the possibility that the administration might decide to resume bombing in Vietnam under certain circumstances, presumably without any authorization from Congress.

Clearly, if this House leaves it up to the administration to decide when to end the bombing, that day may not come until all of Cambodia is turned into a wasteland. It is already on the way to becoming that. In April, a near record of 54,725 tons of bombs were dropped on Cambodia, the equivalent of two and one-half Hiroshimas. Observers reported that because of the escalated Cambodian bombing, the "devastation of the countryside and the movement of refugees have reached unprecedented levels." Civilians, including children, are being slaughtered. Hospitals and schools are being bombed, reportedly by the Cambodian air force under the direction of American commanders.

A report in April by a study mission representing the Senate Judiciary Subcommittee on Refugees presents a tragic portrait of a tiny nation, caught in a civil war, undergoing agonizing punishment from the skies, with men, women, and children the victims of bombs dropped by American Air Force men who do not even see the havoc they create. Inevitably, of course, some American planes have been shot down and new American prisoners of war are being created, but what happens to them pales in comparison to what is happening to the people of Cambodia.

The Senate subcommittee report points out that in the 3 years since the United States invaded Cambodia—ostensibly to end the war in Vietnam—at least one-third of Cambodia's population, some 2 million people, have fled the bombing and battle in the countryside. It has become a nation of refugees. Thousands of civilian casualties have been reported. Orphans number some 260,000. Over 50,000 war widows have registered with the government.

And the report said:

> Nowwhere is the tragedy in Cambodia better seen than in the gaunt faces of the thousands of hungry children our Subcommittee mission saw—little bodies thrown together in makeshift camps, the human debris of the bombing and war.

This once rich rice-exporting land now imports 75 percent of the rice it consumes. War damage to civilian and government installations totals over $2 billion. Nearly 45 percent of the hospital facilities have been destroyed. Over 40 percent of the roads are destroyed or damaged. More than one third of the bridges are out. These are the blessings American air power has brought. And presiding over this destruction of a nation is the feeble, discredited, and unpopular Lon Nol regime.

No end to the bombing is in sight unless we act. Henry Kamm of the New York Times reports that there is "no likelihood that the Cambodian armed forces can reach a level of competence that will make the use of American air power less needed." About the only act of independent self-defense Lon Nol has reportedly been able to mount was his regime's recent arrest of astrologers who had predicted his ouster.

We have a choice today. We can vote to accept the Eagleton amendment and thus end the unimaginable suffering of the Cambodian people. Or we can stand pat any say, Yes, last month we voted to limit funds for bombing, but only until the end of June, and after June the administration has our blessing to continue its unconstitutional, cruel, and wanton bombing of a nation that in no way affects our security or represents any threat to our people or Government. We are voting today to prohibit the use of transfer funds for this kind of activity. How could we then turn around and permit the use of other funds for it?

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

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

Let us choose to make peace.

Mr. MITCHELL of Maryland. Mr. Speaker, I rise today in support of House Joint Resolution 542, although, to be honest, there are parts of the bill which should be unnecessary, although unfortunately they are not. I am referring to the consultation and reporting clauses of the bill. It seems to me that it should have been the natural state of affairs for the executive branch, as it sought to concentrate more and more of the powers of troop commitment, hostility escalation and arms provision in its own domain to grant Congress the token respect of periodic reports and occasional conferences.

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

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

Certainly much has changed since that time, but if you start to talk about changing the basic principle of accountability then you had better realize that you are talking about changing, and sacrificing, the entire democratic structure of our Government.

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

But to pass a war powers resolution without a meaningful congressional activity clause is, well, to simply go on passing—passing by your responsibility to the thousands of people whose multiple voices are combined in your one voice, passing by your responsibility to the thousands of young men who may, in the future, have to fight and die for a decision made in the White House, passing by your responsibility to the Constitution which assumes, that as a Congressman, you want a meaningful say in the foreign affairs of your country.

There are two objections voiced against the stipulation of a 120-day period during which time Congress may halt action and after which time action will be automatically halted unless otherwise stipulated by congressional ruling. These two objections are, basically, that the President will in time of crisis, launch an unusually hostile attack, feeling "pushed" by the 4-month limit.

The other is that a peace settlement will be put off until the end of the 4-month period at which time the United States will lose whatever bargaining power she had. The reasonings behind these two objections, generally put forth by the same people, are mutually annulling. The first idea assumes the possibility of a phenomenally rapid escalation; the second, of an equally phenomenal deescalation. Now, in the wake of our 10-year involvement in Vietnam, this argument takes on a particular significance. During that time, two very powerful, yet very different Presidents told us time and again of the need for time.

For 10 years, it was more time that they needed. If we had to make the distinction, some would argue that it took us 5 years to escalate and 5 years to deescalate. And that was merely for an undeclared war in an area the size of New Jersey. It is hard then for me to view with any alarm objections made, based on the possibility of substantive

escalation or deescalation within a 4-month period.

Again, I stress the fact that we are here to discuss a war powers resolution, not a war courtesy resolution. The power in this resolution lies in the congressional action section. If we refuse to accept that section, we are just wasting our time here today.

If the third section is the congressional ability clause, then the fourth is certainly the congressional responsibility clause. By outlining a definite time sequence to be followed, it insures that Congress will act with the same effectiveness, in terms of thoroughness and speed, that we are demanding of the executive branch. It emphasizes our contention that we are not afraid to accept the rigors of crisis situations. It emphasizes, too, that as large a body as Congress is, it will not accept the characterization of a lumbering bear whose cumbersome nature and slow movements impede, rather than expedite, the course of government, and I am including here the activities which result from our commitments abroad.

Another source of disagreement seems to be the question of whether or not a war powers resolution should cover our present commitments. I assume that this is a point of contention since Mr. Dennis' substitute bill specifically exempts our present commitments in crisis areas. The question as I see it is: Are we going to pass a bill saying, "Yes, we are going to be effective—tomorrow," or "Yes, we will be effective today."

Let me stress the fact that House Joint Resolution 542 does not tie the President's hands. It merely slows them up to the point where we can see what they are doing. There is a carefully inserted provision in the bill which allows for the necessity of an instantaneous decision in the case of nuclear attack. However, in the wake of General Secretary Brezhnev's visit it should be obvious that the administration itself seeks an emphasis on detente legislation and no longer on legislation a la Joseph McCarthy.

It is still true that the best philosophy of postattack recovery is preattack restraint. And the best assurance of preattack restraint is the proper filtering of decisions through both the branches of Government responsible for making them.

Mr. PEPPER. Mr. Speaker, I have no further requests for time.

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

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the pending resolution, House Joint Resolution 542.

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

There was no objection.

WAR POWERS OF CONGRESS AND THE PRESIDENT

Mr. ZABLOCKI. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 542) concerning the war powers of Congress and the President.

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

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 542, with Mrs. GRIFFITHS in the chair.

The Clerk read the title of the joint resolution.

By unanimous consent, the first reading of the joint resolution was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Wisconsin (Mr. ZABLOCKI) will be recognized for 1½ hours, and the gentleman from California (Mr. MAILLIARD) will be recognized for 1½ hours.

The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, the resolution which we are considering today, House Joint Resolution 542, gives this Congress a historic opportunity to correct the imbalance in warmaking powers, which through the practice of recent years have swung too heavily to the President. I think it was very succinctly stated in the opening statement, the opening sentence, indeed, of our first witness during the hearings in this session of Congress. It was the Senator from New York, Senator JAVITS. I think he put the issue in perspective, and I quote:

> There is no longer any serious argument as to the existence of a constitutional crisis over the exercise of the nation's war powers.

The pertinent question is what will the Congress and the President do about this crisis? The defacto concentration of plenipotentiary war powers in the hands of the President has subverted the letter and the spirit of the Constitution. The issue of war powers is undoubtedly one of the most complex and challenging we will ever face. It involves important and intricate constitutional questions which go to the very heart of our democratic system.

The legislation before us deals with a democratic control over that most vital of national decisions: the declaration to go to war. The issue of war powers is a subject that, as I said, is subject to delicate constitutional consideration. In the final analysis, however, the question is quite simple: whether we do or do not believe in our Constitution, whether or not we believe in the unlimited power in this area, and whether this unlimited power should rest with one man—the President of the United States, whether or not we believe in the checks and balances system of the legislative and executive branches, whether or not we believe in ourselves and the oath of office we took.

Madam Chairman, at the conclusion of the debate on this issue of war powers, I am confident our colleagues will decide the question on its merits. That is as it should be. The basic question is whether House Joint Resolution 542 is a practical, equitable, and effective legislative answer to the problem of how this Nation's warmaking powers should be exercised and by whom.

In an effort to help answer that question, allow me to outline briefly some of the background and history of this legislative proposal, as well as the intent and effect of the provisions. As the Members know, this House has passed warmaking powers three times, in the last Congress twice.

Madam Chairman, in the 91st Congress House Joint Resolution 1355 passed the House by a vote of 280 to 39 on November 16, 1970. The Senate failed to act.

In the 92d Congress House Joint Resolution 1 was introduced and passed the House by a voice vote on August 2, 1971. The Senate passed its own version and a parliamentary snarl ensued, and the House was required to act again to pass its version, and it did, by a vote of 344 to 13 on August 14, 1972. In this, the 93d Congress, 30-some bills and resolutions were introduced, and a listing of the sponsors of the bills appears on pages 2 and 3 of the report by the committee on this war powers resolution. This fact certainly is ample evidence that the subject has deep interest.

Hearings were held and the subcommittee has gone into depth in its study and consideration of all the bills introduced in this session of Congress. After 4 days of markup in the subcommittee and 3 more days in the full committee, we reported the bill, Madam Chairman, that is before us for consideration. Throughout that extensive effort our primary objective was to find a workable and equitable solution which would reaffirm the constitutionally given authority of Congress to declare war.

Given that goal of restoring the balance between the executive and the legislative branches intended by the Founding Fathers, the committee was at the same time very sensitive to the President's constitutional war powers. For example, we were determined to avoid any approach defining or codifying the war powers of the President. Such an action would draw rigid lines between the Congress and the President in the area of warmaking powers.

We were also highly cognizant of the President's right to defend the Nation against attack without prior congressional authorization in extreme instances such as nuclear attack or direct invasion. On the basis of the deepened understanding provided in the hearings and from observations over the recent years, it became increasingly evident that the problem did not center on such extreme circumstances. Rather the main difficulty involved the commitment of the U.S. troops, Armed Forces, exclusively by the President without congressional approval or adequate consultation with the

Congress in overseas areas, in foreign countries.

I have gone into both the background of the issue and the complexity of the constitutional questions which governed the committee in an effort to show the challenge we faced. Clearly the problem demanded a balanced and delicate solution and a solution was born of consensus. I believe House Joint Resolution 542 represents that solution. As a consensus I believe House Joint Resolution 542 meets also the test as demonstrated by the subcommittee's vote of 9 to 1 and the full committee's favorable vote of 31 to 4 with one Member voting "present."

Briefly, the legislation does the following:

Directs the President in every possible instance to consult with the leadership and appropriate committees of Congress before, and regularly during, the commitment of U.S. Armed Forces to hostilities or situations where hostilities may be imminent;

Requires that the President make a formal report to Congress whenever, without a declaration of war or other prior specific congressional authorization, he takes significant action committing U.S. Armed Forces to hostilities abroad or the risk thereof, he places or substantially increases U.S. combat forces on foreign territory;

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

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

Stipulates a specific congressional priority procedure for consideration of any relevant bill or resolution which may be introduced. In this connection, Madam Chairman, I wish to reassure you and the other members of this distinguished committee that these provisions of House Joint Resolution 542—Sections 5 and 6—are in no way intended to bypass or otherwise violate your proper jurisdiction. First and foremost, these two sections are intended as so-called antifilibuster provisions. Their purpose is to protect the interests of Congress.

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

Provides that the resolution would apply to those commitments which are in progress on the date of its enactment into law.

In conclusion, I can assure you, Madam Chairman, that House Joint Resolution 542 is the result of much serious thought, comprehensive review, and many hours of careful deliberation. In short, it fulfills our determined objective of providing a means whereby the President and the Congress can work together in mutual respect and maximum harmony toward their ultimate, shared goal of maintaining the peace and security of the Nation.

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

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

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

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

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

It has not been an easy task. I know that his efforts are largely responsible for the fact that on two previous occasions this body did approve a war powers bill. His efforts are also largely responsible for the fact that despite the fact that these two initiatives did not lead to a law, he nevertheless had the determination to bring the subject back out, to work out a different approach. I certainly commend the gentleman.

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

Mr. ZABLOCKI. Madam Chairman, I thank the gentleman from Illinois for his very generous and kind remarks. I would be remiss if I did not call the attention of our colleagues to the fact that the gentleman from Illinois has indeed contributed much to the consideration of war power resolutions over the years.

The reporting section was drawn entirely as a result of his efforts, as well as section 4(c) which has come under question and debate earlier.

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

I also wish to commend the chairman of the Committee on Foreign Affairs (Mr. MORGAN) for his wise counsel and assistance. I also wish to thank the members of the subcommittee for their help, and for the contribution of the other cosponsors of the resolution.

Mr. ICHORD. Madam Chairman, wll the gentleman yield?

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

Mr. ICHORD. Madam Chairman, I want to commend the gentleman in the well for the leadership which he has demonstrated and exerted in this legislation.

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

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

However, I do have a question on page 3, section 4(b), wherein it is stated:

(b) Within one hundred and twenty calendar days after a report is submitted or is required to be submitted pursuant to section 3, the President shall terminate any commitment and remove any enlargement of United States Armed Forces with respect to which such report was submitted, unless the Congress enacts a declaration of war or a specific authorization for the use of United States Armed Forces.

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

Mr. ZABLOCKI. Madam Chairman, the direct reply to that question is "yes." The Tonkin Gulf resolution would satisfy the provisions of that section, of this resolution, section 4(b).

I might say to the gentleman from Missouri that Presidents in recent years and over the history of our country have assumed certain warmaking powers, and the Congress was silent too often. Our intentions in this legislation are to bring us into the formation of policy. Therefore, we have provided for, in a section of the proposal for consultation to the extent possible. We have provided for the President to report to us. Specific congressional actions will follow, thereby taking care of some of the concerns of many that the Congress may not act. Therefore, the congressional priority procedure was included in the legislation.

Section 4(b) would require affirmative congressional action within 120 days. I cannot imagine that at a time when the President commits troops a resolution would not be introduced by one Member of Congress in either body which would require either the affirmation, the approval of the President's action, or a resolution disapproving it.

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

Mr. ICHORD. I believe I understand the gentleman in the well, but I am still concerned about the extreme difficulty we get into as a free Nation when we are involved in an undeclared war. Regardless of how one has felt about the war in Vietnam, one of the main difficulties was that the Government of the country had defined certain objectives but did not have the body of law to protect the objectives of the U.S. Government. That is, we had so many acts on

the part of many citizens both within and without the country which, in a time of declared war, would have been treason. Never again do I want this Nation to become involved in another undeclared war.

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

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

I might say to the gentleman, with the reporting requirements and the consultation required of the President, I believe the Congress will be in a much better position to deal not only with the commitment of troops but also with the problem the gentleman from Missouri raised.

Mr. ICHORD. I agree with the gentleman that I believe it would be better than having nothing at all, but I am still concerned about our getting involved again in an undeclared war situation.

Mr. ZABLOCKI. I might say to the gentleman from Missouri that we are all concerned about that development. Therefore, this legislation is before us today, not only to allay our concern but also to bring about a solution to the problem.

Mr. YOUNG of Florida. Madam Chairman, this is too important an issue to be discussed before an empty House. I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Twenty-five Members are present, not a quorum. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 279]

Adams	Diggs	Murphy, N.Y.
Addabbo	Edwards, Calif.	Nichols
Alexander	Esch	Nix
Anderson, Calif.	Eshleman	Owens
	Evans, Colo.	Patman
Anderson, Ill.	Evins, Tenn.	Pepper
Archer	Fisher	Peyser
Ashbrook	Flynt	Powell, Ohio
Ashley	Fraser	Railsback
Badillo	Gray	Rees
Baker	Green, Oreg.	Reid
Beard	Gross	Riegle
Bell	Gubser	Roe
Bergland	Hansen, Wash.	Roncalio, Wyo.
Bingham	Harvey	Rooney, N.Y.
Blatnik	Hawkins	Rooney, Pa.
Boland	Hays	Rosenthal
Bolling	Hébert	Runnels
Bowen	Heckler, Mass.	Sandman
Breaux	Hogan	Sikes
Broomfield	Hunt	Steiger, Ariz.
Burke, Calif.	Johnson, Pa.	Stubblefield
Burlison, Mo.	Jones, Ala.	Sullivan
Byron	Karth	Symms
Carney, Ohio	King	Teague, Calif.
Cederberg	Kluczynski	Teague, Tex.
Chisholm	Koch	Thompson, N.J.
Clark	Kuykendall	Thomson, Wis.
Clay	Landrum	Tiernan
Conable	Mathias, Calif.	Van Deerlin
Conyers	Meeds	Whitten
Coughlin	Michel	Widnall
Crane	Mills, Ark.	Wyatt
Danielson	Minshall, Ohio	Wydler
Davis, Ga.	Mitchell, Md.	Yates
Davis, Wis.	Mizell	Young, Alaska
Delaney	Moorhead, Pa.	Zion
Derwinski	Moss	Zwach

Accordingly the Committee rose; and the Speaker having resumed the chair, Mrs. GRIFFITHS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (H.J. Res. 542), and finding itself without a quorum, she had directed the Members to record their presence by electronic device, whereupon 320 Members recording their presence, a quorum, and she submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRWOMAN. When the point of order that a quorum was not present was made, the gentleman from Wisconsin (Mr. ZABLOCKI), had the floor and had consumed 19 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

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

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

Mr. DENNIS. I thank the gentleman for yielding.

I should like to join with my colleagues who have complimented the gentleman from Wisconsin for his pioneering effort in this very difficult and important field. I join unreservedly in that compliment, even though I, unfortunately, do not agree with the gentleman's bill. I do agree with the gentleman's intent on the subject of war powers, but there are certain features of the gentleman's bill which give me great concern.

When we rose here a minute ago, the gentleman from Missouri had been talking with the gentleman about section 4 (b). That section gives me great concern, too, because that section says that the President must make a report of committing troops to combat when there has been no declaration of war, and that then within 120 days, after that report has been submitted, his authority to conduct the hostility expires, unless the Congress in the meantime has affirmatively acted either to declare war or to otherwise approve the action taken.

Mr. ZABLOCKI. Or disapprove.

Mr. DENNIS. That is right, but if it is disapproved, of course, it would expire. The point I am making is that under the gentleman's bill there is no question but what the very important policy determination of whether hostilities should continue or not can be decided by our inaction. In other words, if we do not do a thing in the Congress, when the 120 days have expired, we have thereby made the fateful decision that the hostilities commenced by the Executive should end.

I submit to the gentleman that we should have the authority—and the gentleman's bill I know grants that—to require the Executive under those circumstances to terminate his action, but it seems to me only fair and proper that if we want to take an important step at that time, we should be required to take some vote affirmatively to terminate.

As the gentleman knows, I, myself, have a war powers bill before the Congress which so provides. Under my bill if there has been no declaration of war or any attack on the United States—the bill does not apply in those two cases—and the President, nevertheless, commits troops to combat, he must make a report to us, and within 90 days, under my proposal, we must vote it up or down. We have to vote, but we do not make him stop unless we vote it down.

I cannot help but suggest to the gentleman—and I am very, very sincere about this—that if we are going to take such an important step and determine such important policy, we should do it by an affirmative vote, not just by letting 120 days drift by without acting, which then automatically ends the authority to conduct the hostility.

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

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

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

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

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

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

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

Mr. WOLFF. Madam Chairman, I would say so far as the Congress not declaring war, this is an action in itself because the full power—and I do not agree with those who say it is shared power—to declare war resides in the Congress of the United States. I quote John Marshall:

> The war powers being by the Constitution vested in the Congress, the actions of that body alone can be resorted to as our guide.

The mere fact that the Congress does not declare war is in itself an affirmative action.

Mr. ZABLOCKI. We do intend to complete the general debate tonight, Madam

Chairman. We have a heavy schedule for the entire week. This is important legislation. We would want every Member of the Congress to be here for the debate and we will have a further opportunity on Wednesday when we read the bill for amendment under the 5-minute rule. We must finish the debate tonight and I hope we will not have any interuptions. I want to make the announcement that we will finish debate whatever the hour. Within the 3 hours, we will hear everybody's views and try to answer the questions.

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

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

Mr. DENNIS. I am sure the gentleman has given my bill the utmost consideration, there is no question about it in my mind, and I wish the gentleman had arrived at a different solution, but under my bill as the gentleman knows, if there has been a declaration of war or attack on this country the bill does not apply at all, and the bill further says that we in Congress must be consulted first except in emergencies.

It is only in emergency that the President is going to be able to commit troops without consulting us, under the terms of my bill, but if he does that then it just seems to me if we want to call him off and end it, it is only in an emergency situation where he can do it at all, and it ought to be incumbent on us to tell him our views and to vote them, and we should not decide a question like that just by letting 120 days go by and not doing anything.

I would say to the gentleman, in my humble opinion under the legislative setup in the Constitution, we cannot pass a binding law and completely circumvent the Executive as the gentleman tries to do with his resolution, if we try to act to stop the war. If our action is going to have the binding force of law, it has to be reported to the Executive. We cannot avoid the problem of the veto because it is built into the constitutional scheme.

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

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

Mr. ZABLOCKI. I yield to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Madam Chairman, I wonder if I misheard what the gentleman said. Did I understand the gentleman to say that a decision had been made in subcommittee against positive action by Congress to upset a Presidential determination to use troops? Did he describe that decision as, "We must close all these little loophopes?"

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

Mr. ZABLOCKI. Madam Chairman, that is not the interpretation at all. If we are going to reassert our constitutional obligation and responsibility, and bring balance in the warmaking powers area, it is necessary that we take such steps and enact such legislation wherein a veto will not negate the outcome a majority of Congress wishes to bring about. In so doing, I point out to the gentleman, 4(b) closes that "little loophope" of a veto that the President can use in vetoing actions of the majority of the Congress or the majority of the people of the United States. The President could veto and it would require two-thirds of Congress to overrule him. That is what I was referring to.

Madam Chairman, I reserve the balance of my time.

Mr. MAILLIARD. Madam Chairman, I yield myself such time as I may consume.

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

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

Madam Chairman, I want to join those who have commended and complimented the distinguished chairman of the subcommittee. As ex officio member of that subcommittee, I attended as many of the hearings and as much of the markup as I could, and he certainly gave full attention to the rather delicate and complicated problems that are involved here.

Members will recall that on three prior occasions the House has passed legislation concerning war powers. Twice in the 92d Congress we approved the language of House Joint Resolution 1, which contained sections calling upon the President to consult with the Congress before involving the Armed Forces of the United States in conflict, and then report to the Congress all actions taken without specific prior authority by the Congress.

While I supported these resolutions and still strongly support the consulting and reporting provisions of the resolution before us, I must say that I have reservations—serious reservations—over some of the operating provisions that have been added to this year's bill. In particular, I am concerned, as others who have already spoken have expressed their concern, over section 4(b), through which the President can be forced to act as a result of the failure of the Congress to act.

Under section 4(b), the President will be required to terminate any commitment and to remove any enlargement of the U.S. Forces with respect to which a report would be required and had been submitted to Congress, unless the Congress enacts a declaration of war or some specific authorization for the use of the U.S. Armed Forces. The effect of 4(b) would be to permit the exercise of congressional will through inaction.

Surely the Congress ought to exercise its powers in a positive way by voting "yes" or "no."

There are some other sections that we ought to look at very carefully. Section 4(c) provides that the Congress can by a concurrent resolution force the President to disengage U.S. Forces when they are engaged in hostilities without a declaration of war or other specific authority. The constitutionality has been questioned by many people, and there are many distinguished lawyers, of which I cannot claim to be one, who suggest that such a concurrent resolution cannot be made binding on the President since it does not comply with the constitutional requirement that anything with legislative effect be presented to the Chief Executive for his approval or disapproval.

Madam Chairman, I could discuss the provisions of this resolution at great length, but I believe we know already from the debate what the principal and significant points are, over which we should be concerned. The gentleman from Wisconsin (Mr. ZABLOCKI) has already discussed the joint resolution very effectively. Other Members are interested in expressing their views.

In conclusion let me say that when the time comes I expect to support the efforts of two members of our committee, the gentleman from Alabama (Mr. BUCHANAN) and the gentleman from Ohio (Mr. WHALEN) to amend section 4(b) to correct the shortcomings I have described and basically to conform pretty much to the provisions that are in the bill which was introduced by the gentleman from Indiana.

I would urge support of this amendment. I believe then we would have a good measure. If the amendment could be adopted I would vote "yea" on final passage. As it is, I have very serious reservations.

I should like also to mention in passing that I expect to offer what I feel will be a perfecting amendment to provide for contingencies, when the President may have to continue hostilities after he has been directed to cease them in order to disengage our forces with reasonable safety. There is such a provision in the Senate bill. I do not know whether it was discussed in subcommittee, but it would seem to me it is almost essential to have some mechanism by which, if the Congress should act positively, or after 120 days, if the automatic provision remains in the bill, the President could take action. If the 120 days are up and he has to undo whatever he has done it would seem to me certainly we would want to let him have authority to let the troops fight their way out with maximum safety, instead of just having a pell-mell automatic dropping of guns and leaving.

I suppose one could say it was implied. I believe the Senate was wise to include the provision. If under those circumstances he certifies to the Congress that this is the situation and in order to safely withdraw from hostilities the hostilities must go on for a given period of time, this would give him legal authority to do it.

I do not agree with too much of the

Senate bill, but I believe this is one provision we should copy.

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

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

Mr. SKUBITZ. On page 4 are we really saying that the President shall terminate any commitment and remove any enlargement of U.S. Armed Forces unless the Congress enacts a declaration of war or a specific authorization for the use of U.S. Armed Forces, on the basis of something similar to the Gulf of Tonkin Resolution?

Mr. MAILLIARD. That is precisely what we are saying, yes.

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

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

Mr. FINDLEY. I thank the gentleman.

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

As a courtesy to the Members of this body, I wonder if the gentleman would read the language into the RECORD at this time, so that it would be in the printed RECORD and therefore we could examine it in advance, for consideration on Wednesday?

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

Mr. ZABLOCKI. Madam Chairman, I yield 8 minutes to the gentleman from North Carolina (Mr. FOUNTAIN).

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

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

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

In other cases, the answers have resulted in democracy—as in the American Revolution—and have brought about the defeat of vicious aggression—as in World War II.

Always unwelcome, this question of war or peace is probably the most significant and far-reaching question any nation is ever compelled to face up to. In a democracy, surely the question is not to be answered by one man alone.

Consequently, our debate today, establishing responsibie guidelines relative to the war powers of the Presidency is a crucial one. The manner in which we settle it will have long-lasting effects on the future of democracy in our country.

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

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

No President, however sincere and dedicated, ought ever to have unlimited power to commit our Nation to war, without the express approval of the Nation through its duly elected, locally responsible representatives, in the Congress of the United States.

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

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

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

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

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

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

That is the purpose and effect of the measure before the House today—House Joint Resolution 542, the War Powers Resolution of 1973.

This landmark measure simply reaffirms congressional responsibility under the Constitution. It would require the President to act within constitutional limits, in any commitment of U.S. forces abroad.

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

This resolution was shaped by the Foreign Affairs Subcommittee on National Security Policy and Scientific Developments, of which I am a member.

It is the fourth such resolution on war powers to be reported by that subcommittee in the last 3 years. Moreover, it is the most comprehensive and strongest measure to be reported.

After careful study and consideration of the voluminous testimony before the subcommittee on the issue of war powers, I am convinced that the proposal we are debating today neither takes away from, nor adds to the constitutional rights or powers of the President.

In other words, the constitutional authority of both the President and the Congress are left intact. We couldn't change their respective powers, if we tried to, not by legislation.

What the resolution does do, however, is require the President to use his constitutional authority in a responsible manner, when he deems it necessary to involve the United States militarily overseas.

At the same time, House Joint Resolution 542 places a burden on the Congress to act responsibly in addressing itself to such situations.

Some Members have expressed uneasiness about the mechanism provided in section 4(b) of the resolution, which would require that any commitment of U.S. Armed Forces to military action must end after 120 days, if Congress has not acted affirmatively to endorse the President's action.

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

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

Opponents of the provision have suggested that we run the risk of requiring the President to disengage from combat abroad simply as a result of congressional inaction.

Such a view demeans the seriousness with which the Congress conducts its responsibilities in issues of war and peace. The attitude proceeds from a kind of "worst case analysis" which overlooks the totality of the war powers resolution and the political environment which would prevail if events triggered its procedures.

Under the resolution, the President would be expected to consult with congressional leaders before making decisions which would send American fighting men abroad into combat.

Under the resolution, the President would be required to report to the fullest extent possible on objectives and scope of the commitment he had undertaken.

Without question, legislation calling for an affirmation of the President's action would be introduced into the Congress, probably immediately after the commitment.

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

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

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

I, therefore, urge that this body reject any attempts to delete section 4(b)—a deletion which would destroy the heart of the resolution.

Madam Chairman, I have stood with three Presidents on the need for protecting the American commitment in Vietnam. Once our forces were fighting there, once our honor had been committed, I believed we had to see the conflict through.

This was particularly impressed upon me during a study mission to the Far East in 1969. Our group met with the distinguished Prime Minister of Singapore, Lee Kuan Yew.

He impressed upon us that the United States as the "bulwark of freedom"—those were his very words—could not leave Asia under conditions of defeat, surrender, or disgrace. His words were, indeed, convincing.

At the same time I have supported our Vietnam commitments, however, I have had grave misgivings about the lack of consultation and cooperation between the Executive and the Congress about the conflict in Southeast Asia.

The Congress has not been permitted to play the role in these hostilities which the Constitution mandates. Consequently, we must have more concrete guidelines for both the President and the Congress, if we are to avoid repetition of past mistakes.

Madam Chairman, we are pondering matters of great significance today. The outcome of these deliberations may well affect future decisions on war and peace for this Nation.

Let us hope and pray that we will never again be forced to make such decisions. Recognizing the possibility of such decisions in the future, however, let us be prepared to reach a national consensus on a course of action before the Nation has become irretrievably committed.

That is the purpose of the war powers resolution of 1973. I urge its adoption.

Mr. MAILLIARD. Madam Chairman, I yield 10 minutes to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Madam Chairman, I feel constrained to begin by expressing regret that we should be discussing one of the most important pieces of legislation to be considered this year at so late an hour. No necessity compels us to do so. I might point out that it is now 12 minutes past 7 and I am the fourth speaker on this proposal. I regret that this should be the case because I sense a feeling among proponents that we should not debate the issue at all. In fact, during the quorum call just now I was asked if I would not submit my remarks for the RECORD. If I would do so, it was suggested that others who were planning to speak would do likewise. It is my opinion that what is involved in this legislation is too important for us to treat this so casually.

Quite obviously there are men and women with good intentions who are supporting this joint resolution. But as I said when I appeared before the Committee on Rules, good intentions do not make good legislation. My misgivings about this particular joint resolution, as it is now phrased, are monumental.

While I respect my colleague, the gentleman from Wisconsin (Mr. ZABLOCKI) I do not agree with him—in fact, I emphatically disagree—that this is a practical solution.

I do not think it is effective. I do not think it is fair. I do not think it is equitable. Above all I do not think it is workable. I do not think it is sensitive to the President's constitutional war powers. I do not think it is a delicate solution. I do not think there has been any subversion of the letter or spirit of the Constitution which makes this ill-advised effort in order.

Likewise I disagree with my eloquent friend, the gentleman from North Carolina. I do not think it will avoid the repetition of past mistakes. In fact, I can see nothing that would justify the resolution as written except a compulsion for self-assertion on the part of Congress.

I know that Members of the House have all received letters concerning this resolution, some urging support for the measure as it came out of committee, and others urging major changes in its language.

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

In recent years many Americans in Government as well as in private life have voiced concern over what they see as a diminution of the historic role of Congress as the final arbiter of war and peace. The proponents of House Joint Resolution 542 would have us believe that this measure addresses itself to that problem and helps correct it. In fact, nothing could be further from the truth.

The obvious spot to look to determine the purpose of the legislation is the report of the committee and, I might say, the statements of the proponents.

Let us look at the report. On page 3 it asserts that the Cambodian incursion of May 1970, caused many Members to be disturbed by the lack of consultation with Congress. Another reference on page 5 is to the commitment of U.S. Forces exclusively by the President without congressional approval or adequate consultation with the Congress.

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

Mention has been made by several Members with respect to the fact that the House has acted favorably in previous years on war powers resolutions, but this resolution is quite different from what we have approved before. What we have approved previously was basically to underscore the necessity of Congress getting updated and adequate information so it could play its historic constitutional role.

In another place, on page 5 the committee's aim was "to reaffirm the constitutionally given authority of Congress to declare war." The report also declares on page 4:

> To restore the balance provided for and mandated in the Constitution, Congress must now reassert its own prerogatives and responsibilities.

In his letter to Members, the chairman of the Committee on Foreign Affairs (Mr. MORGAN) talked of balance, and the gentleman from Wisconsin has also talked of balance. Dr. MORGAN said:

> There is growing opinion in and out of Congress that in recent years the balance of war-making powers in practice has swung too heavily to the President.

Certainly I do not argue over the need for any President to consult closely with Congress, especially on matters involving the use of our troops. There is a need for him to report fully and frequently on the nature of threats to peace or the reason for an outbreak of hostilities.

For this reason I fully support the approach of section 3 of House Joint Resolution 542. However, I agree with the gentleman from Nebraska (Mr. MARTIN) that it is unwise to include in those requirements an extension of the financial cost of a commitment of troops. The information would be of little value to us in deciding whether the initiative taken by the President was good, bad, or indifferent, and it might well be of substantial help to an enemy in determining the depth of our commitment of troops overseas.

I should point out in another place in the committee report, at the top of page 9, in commenting on section 3, it states that compliance "will provide the Congress with adequate information on which to base its deliberations and possible actions" regarding the President's commitment of forces. I agree with that statement. But if information furnished under section 3 will provide an adequate basis for action by Congress, why is there any need for the unfortunate language of section 4?

The gentleman from Wisconsin (Mr. ZABLOCKI) has attempted to provide an answer. He said it is to correct an imbalance. If there is an imbalance that requires a reassertion of our right to declare war, I do not see why that should be necessary. Surely no one has ever doubted that the Constitution specifically grants Congress that important power.

And I doubt very much, though I wish it were the case, that the gentleman from Wisconsin is correct in saying that declared war is something for the pages of history. Time alone will tell, but I assume if we are to prove anything by this exercise, it is to remind us that we have the inescapable obligation of declaring war if circumstances so indicate. So why is there now need to reassert this particular power of declaring war? And just what are the other powers which must be reasserted to restore balance? And why must these unspecified powers be reasserted at this particular time?

The gentleman from Pennsylvania (Mr. MORGAN) says approval of House Joint Resolution 542 will express our "willingness"—this is his expression—to accept responsibilities in the war powers which were "intended" by our forefathers. Surely he does not mean that Congress has delegated or could delegate other powers given to us by the Constitution.

And has Congress shown itself unwill-

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

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

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

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

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

Mr. FRELINGHUYSEN. I thank the gentleman from New York for his compliments.

My real regret about the nature of this debate is that it seems to have been taken casually by too many Members. I have no intention of calling attention to the fact that there are relatively few Members on the floor, but I would hope we are going to have a discussion, pro and con, of some of the unwise provisions of this bill before the debate concludes. I do not know whether it is supposed to be a threat that we may be here until midnight, but I think it is unfortunate that we should have begun the debate after 6 o'clock and that we have come such a short way into the debate by almost 7:30.

In any event, the framers of the Constitution, as I was saying, had flexibility in mind when they deliberately refrained from closely defining the responsibilities of the legislative and the executive branches with respect to the power to make war. Section 4(a) and section 4(b), on the other hand, seek to develop a mechanism under which the President and the Congress would necessarily have to follow a rigid series of procedures.

Section 4(b), in the words of the committee report, seeks "to deny the President the authority to commit U.S. Armed Forces for more than 120 days without specific approval"—by Congress, of course. This termination of our involvement in hostilities and the enforced withdrawal of our forces is unconditional. It must be done without regard even to the safety of our Armed Forces.

Let us examine the reasons given for this language. Unquestionably, a basic purpose must be to force Congress to reassert itself; that is, declare war, specifically support the President or specifically oppose him. In simple terms, its purpose is to goad Congress to discharge one of its fundamental responsibilities.

Somehow, it seems to me sad and unjustified that there should be this feeling that Congress is weak kneed, that we are reluctant or even incapable of action, that we must be reminded of the urgency of fully considering the implications of hostilities in which our own troops are involved.

But, perhaps section 4(b) needs to be read again. It aims, the committee report says, "to deny the President the authority" to commit our forces for more than 120 days. This is an extraordinary proposition. Especially as this denial will occur if there is a failure to act on the part of Congress. The language tacitly assumes that the President, as Commander in Chief, has the power under the Constitution to commit our troops in times of crisis.

If he has that power, and I hope there is no argument on that point, how can that power be denied him? How can it be abrogated by the passage of a fixed time schedule? The gentleman from North Carolina says there is no power taken away from anyone under this proposal, that nothing is given to Congress or taken away from the President. Well, what is this attempt to deny the authority to the President except an attempt to deny a power which he has under the Constitution as Commander in Chief?

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

Mr. FRELINGHUYSEN. I yield to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, I was going to ask the gentleman from New Jersey if the President, as Commander in Chief, has a constitutional right in the case of an emergency such as an attack upon the United States, to deploy troops, perhaps on the high seas or even in Europe, and I think he does have that constitutional right. How can we say that that constitutional right expires at the conclusion of 120 days because we do not reaffirm it by a vote in this body?

Mr. FRELINGHUYSEN. Madam Chairman, to answer the gentleman's question, I consider as a practical matter, if there is authority in the President to take these actions, the lapse of a time period could not deprive him of that power.

We should be pragmatic about what we are discussing. The proponents of this resolution realize that inaction is the strongest weapon Congress has. We have had Vietnam as a problem for 10 years, and until today we did not take any positive, direct action with respect to winding down that war.

The CHAIRWOMAN. The time of the gentleman has expired.

Mr. MAILLIARD. Madam Chairman, I yield 1 additional minute to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Madam Chairman, the fact of the matter is that there is little likelihood in many cases that Congress will move in any direction, so the deliberate intent of this resolution is to have congressional inaction kick off a key change in national policy. I think this is objectionable. I think it is unconstitutional. Our past record underlines the basic responsibility of Congress, as the gentleman has pointed out earlier, at the very least, positive action by Congress should be required if there is to be a change in the national course begun by the President under his constitutional authority as Commander in Chief.

Mr. DENNIS. Madam Chairman, if the gentleman will yield again, in the time remaining, I wonder if the gentleman has any thought on the different but equally interesting subject as to whether, had this resolution been in force at the time we got into Vietnam, it would in fact have done anything to prevent that involvement?

Mr. FRELINGHUYSEN. Madam Chairman, I am glad the gentleman asked me that question. If I had more time, I would be glad to answer at length. It would not. I was here when we passed the Tonkin Gulf resolution. Had a President of the United States said, "The best way to defend the people, I believe, and to protect our security is to declare war," we would have declared war.

The conclusion, Madam Chairman, let me say that this attempt to limit the President's ability to defend the United States—by failure of Congress to take affirmative action—strikes me as inexcusably irresponsible. Proponents argue that a fixed time period allows Congress the necessary time to become knowledgeable about the nature of the crisis and then to decide whether to support him or not. But, are we in Congress so impotent that we must attempt to transform our inability to act into a positive policy action? Does commonsense not tell us this is a dangerous course?

It must be obvious, moreover, that if the President can exercise his authority with reasonable assurance only for the 120-day period that he will act differently than he would if he faced no such deadline. Could we in Congress seriously expect that a President would merely stand by to await the ponderous inaction of Congress to undermine his considered course of action? To win support for his actions, he might hurriedly accelerate the fighting, he might "go for broke" when he otherwise would move more deliberately. He might turn a relatively minor affair into a situation calling for the upholding of national honor. Similarly, an enemy might avoid coming to terms with our Government, in the hope that with the passage of time the President's authority would expire.

This 120-day limitation, it seems to me, represents an attempt to deal with an unforeseeable future situation, almost surely of critical importance to our Nation's security, in a way which might well jeopardize our national interests. Its strict definition, in advance, of our mode of operations, would have the effect of upsetting, and quite possibly destroying, the flexibility by which successful policy decisions are reached.

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

In other words, let us assume that at some time in the future a situation arises which threatens American security. The President meets it by deploying U.S. forces abroad. He reports that action to the Congress. The Congress is unable either to approve or disapprove the Presidential action. After 120 days, regardless of the situation and regardless of the threat to the United States, the President is enjoined from continuing to act to meet the situation in his best judgment. The threat to U.S. security continues, and there is no one in the U.S. Government willing and legally able to take the responsibility for making the decisions necessary to meet the crisis.

It is one thing for the Congress to insist upon being able to participate in the decision to deploy forces abroad. But, surely it is altogether another thing to say that if the Congress is unable or unwilling to make a decision, then the President also should be legally required to share that paralysis. Must Congress, in its desire to "assert itself," leave this country incapable of taking the steps necessary to meet some future threat to the security of our people? Surely not. Yet that is exactly what section 4(b) would do.

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

Furthermore, it is doubtful that this provision could ever be workable. As Presidents have throughout our history, it is predictable that a Chief Executive will ignore a concurrent resolution if he does not agree with it. It seems to me particularly unwise to invite him to do so at a time of national crisis.

Sections 4 (b) and (c) do not aid in clarifying a twilight zone of authority between Congress and the President. Rather, they succeed in raising a host of new problems. In the past decade the United States has gone through a searing experience in Indochina. During that period the executive branch proved to be less than forthcoming in its relationship with Congress.

I, for one, desire, indeed expect, the Executive to report fully and consult closely with Congress, particularly during times of crisis. For that reason, I wholeheartedly support the reporting and consulting approach to warpowers legislation. The role of Congress would be enhanced by legislation which would spell out the circumstances under which complete information would be provided promptly. At that point Congress can best be able to decide what legitimate, and constitutionally appropriate, steps it should take.

I should like now to digress. Our role in the war in Indochina—the obvious motivating force behind House Joint Resolution 542—is virtually at an end.

Had House Joint Resolution 542 been on the books 10 years ago it would not have changed the role of Congress in that conflict, or in its resolution. It would have given us no powers we did not already possess, nor would have given us the wisdom to know what course to take. It is almost certain, had a 120-day deadline been in effect at the time of the incident in the Gulf of Tonkin that Congress would have voted approval of President Johnson's decisions, or indeed have made a declaration of war. That kind of action would not have made our struggle in Vietnam any easier, in fact, it would have tied us more tightly to the massive involvement which followed.

In trying to discover a more effective role for Congress to play—particularly in times of national crisis—we should not be tempted to embrace anything that appears at first glance to contain "strong" provisions. House Joint Resolution 542, while certainly insuring an important role for Congress, so perverts the warmaking process that there could be confusion and confrontation within our system at a time of major crisis. We should recognize the truth of what Justice Goldberg once said, "The Constitution is not a suicide pact." The war power, we should remember, is the power to wage war successfully.

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

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

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

One of them certainly is the concept that we got into Vietnam because this Congress was unable or unwilling to act; that somehow or other the President slipped this war over on us when we were not looking and we are only now getting around to retrieving the "balance of power" between the House and the White House.

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

I was here at the time of the Tonkin Gulf resolution, along with the gentleman from New Jersey, and this House could hardly restrain ourselves from rushing to put that measure through and send it on the way to the Senate by a unanimous vote. In fact, there were only two who voted against it in both Houses, and both of them failed to return to the Senate the next time they were up for reelection.

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

Oh, there has been a lot of talk in this session about the need for Congress reasserting its control and taking away some of the powers the White House has stolen from us. Well, the one area where there is no question about our authority to control is in appropriations, in the budgetmaking process. We have got the purse strings, all right, and no constitutional lawyer would ever dispute that fact. But there are a lot of constitutional lawyers who have trouble in trying to decide exactly where the President's powers as Commander in Chief end and the congressional power to declare war begins.

One can get lawyers on both sides of that issue, and we could argue until the cows come home on it. But here we are, 3 or 4 days away from the beginning of fiscal year 1974, a year when we are supposed to be asserting the independence of the Congress, and the authority to exercise our powers. And yet we have still not even come up with an alternate budget to the one the President has proposed for 1974 back in January.

There have been a few Members of the other body who have devised an alternate congressional budget of their own. But I have been urging the leadership of the House, "If you do not like the President's budget"—and I do not like it too much myself—"then let us come up with an alternate budget." But we still have not gotten it. And we are dragging our feet in developing budget control legislation. We are still back today in the old business of passing individual appropriation bills without knowing what they are likely to add up to.

So the one authority we have the clearest and most certain ability to exercise we refuse to exercise; but here we are trying to take away the powers of the President as Commander in Chief under certain dubious interpretations of constitutional distribution of power.

Of course, everybody knows what we are really doing here. We are trying to repeal the Vietnamese war. And we are doing it after that war has come to an end, or very largely to an end. It was an

unpopular war; there is no question about it. I do not believe it has been especially popular in my district. But I have stuck with it because I believe it was in keeping with all our efforts since World War II to create a world of stability and free of aggression. I stuck with President Kennedy. And I believed that just because we changed from President Kennedy to President Johnson was no reason to change my opinion that our commitment over there was proper, so I did not change my mind under President Johnson, and I did not change it later on when President Nixon became President and continued a policy carried on under three previous Presidents.

But it is an unpopular war, no doubt about that, and now has finally gotten out of the way. Let us not forget that the Congress continued to support this war at every opportunity, including under President Nixon. But now, that it is finally over, we are going to try to square ourselves with the voters by repealing the Vietnam war by putting this legislation on the books.

Actually, as the gentleman from Indiana (Mr. DENNIS) pointed out, if it had been on the books at the time it would not have done any good anyway.

Madam Chairman, just to show that I am not choosing up political sides here tonight, let me say that this reminds me of another futile action, equally futile and equally ridiculous, and equally based on a fiction. That is the 22d amendment to the Constitution, which was an attempt to repeal the third and fourth terms of President Franklin Delano Roosevelt years after he was in his grave. The Republicans could not defeat him, so when the finally got control of Congress, they tried to constitutionally amend those third and fourth terms out of existence. They did it all right, but they lived to regret it when President Eisenhower became President, because if he had not been mortal he might still be our President. The Rebublicans regretted that amendment in 1960 and we will live to regret this bill if we pass it in the form it has come out of the committee.

The CHAIRWOMAN. The time of the gentleman from New York (Mr. STRATTON) has expired.

Mr. ZABLOCKI. Madam Chairman, I yield the gentleman 1 additional minute.

Mr. STRATTON. Madam Chairman, I thank the distinguished gentleman for yielding me another minute.

The thing that disturbs me most about this legislation is that it is based on the assumption that somehow the people of the United States are going to elect a devil and put him in the White House and, therefore, we have got to watch him and tie him up with legislative restrictions. But this bill is not going to prevent that kind of individual in the White House from getting us into trouble, because he would still be the Commander in Chief of the Armed Forces and he would still have at his fingertips the nuclear button. And if he really wanted to get us into war, if he really wanted to get us into trouble, he could always push that button and no legislation—certainly not this legislation—would ever prevent that.

We simply cannot pass a law to prevent everything that we do not like. This Government of ours could never have functioned as long as it has if there had not been some element of mutual understanding and mutual respect between all three of the branches. And not even this legislation is going to repeal that very necessary part of a functioning democracy.

Actually, Madam Chairman, this effort to try to set some kind of outside control over the Nation's military activity is nothing new. I served back in 1941 as a congressional secretary here and I can remember that one of the more famous House Members then was a gentleman from Indiana, Louis Ludlow. Louis Ludlow was the author of the Ludlow amendment, which was designed to keep America out of war especially another world war, simply by requiring a national referendum before we could go to war. Think what might have happened on December 7, 1971, if we could not have moved at Pearl Harbor until after a national referendum had been held.

What we would really be doing if we were to pass this legislation is undermining the proper power of the President to speak for the country in foreign affairs. Think, for example, what might have happened during the 1962 Cuban missile crisis had President Kennedy been restricted by this kind of legislation. Would Khrushchev have taken President Kennedy's threats to invade Cuba seriously if this legislation had been on the books?

And in that connection, incidentally, let me say to my Democratic friends who are supporting this legislation so strongly that we ought not to overlook the fact that some day we may have a Democratic President in the White House again—in fact that is likely to be the case. I would say, before this legislation would actually make much difference in our foreign affairs. Do you really want to hamstring a new Democratic President as he tries to provide some worldwide leadership in building a peaceful and stable world?

Actually the real effect of this legislation, if it passes, will be to undermine our deterrent power rather than enhance it, because a great deal of deterrent power depends on keeping the enemy guessing about just what we are likely to do. This bill would remove a significant portion of that element of predictability.

Likewise, this legislation would certainly impair our current treaty commitments, especially in connection with our NATO Alliance in this new year of Europe." Surely this is not the time to give one more body blow to one of our most successful measures of foreign policy—our NATO Alliance.

The fact is this legislation will not make us more secure. It will simply force our enemies or our competitors, if you wish to call them that to shift their tactics just a little bit. Instead of attacking us directly, as the Japanese did at Pearl Harbor—and thereby turned a strongly anti-war Nation overnight into a strongly pro-war Nation—a future potential enemy would simply nibble away at our rights and interests, and perhaps even our territory, bit by bit the old salami technique, and never so dramatically as to precipitate a strong and obvious majority in the Congress.

This of course is what Hitler did successfully for 3 years in Europe, in the Rhineland, in Austria, and in Czechoslovakia. And it is what some people believe some Soviet leaders would like to be able to do in Western Europe, to bring about the "Finlandization" of that contingent, weaken its will to resist, and nibble away at its territory and its interests.

So I do not support this legislation, Madam Chairman.

I am especially disturbed over the provision of this bill which other speakers have referred to, which permits inaction on the part of Congress to override and rescind an action of the President.

If we are not to undermine the credibility of our country and our vital deterrent power, I believe the legislation should be amended to require positive action of disapproval on the part of Congress to override the President. The gentleman from Indiana (Mr. DENNIS) has offered an amendment along these lines, I would support his amendment, and if it is not successful shall myself offer a simpler amendment along the same lines. We have a precedent for this action in the Reorganization Act, and I believe something like it would be far more acceptable than the present wording of the bill.

Mr. MAILLIARD. Madam Chairman, I yield 10 minutes to the gentleman from Illinois (Mr. FINDLEY).

Mr. FINDLEY. Madam Chairman, I have already paid my compliments to the distinguished chairman of the subcommittee which brought this bill before us today. I would like also to compliment several other members of the Committee on Foreign Affairs. The gentleman from Pennsylvania (Mr. MORGAN), the chairman, rendered great service to this body when he sent a "Dear Colleague" letter to all of us outlining his views, and I think eloquently so.

Also, on the Democratic side my colleague, the gentleman from Florida (Mr. FASCELL) nearly 4 years ago dropped into the hopper a war powers bill. This by coincidence happened within a few days of when I introduced my first proposal. I also compliment the gentleman from Minnesota (Mr. FRASER) and the gentleman from New York (Mr. BINGHAM).

Over these years I have certainly learned a lot about this bill. I do not pretend to be an expert at this point, but I have learned a lot from the discussion and the deliberations and the consideration now of three different bills which have come to the floor.

Madam Chairman, I also want to pay my compliments to two Republican first-term members of the Committee on Foreign Affairs, the gentleman from Pennsylvania (Mr. BIESTER) and the gentleman from Delaware (Mr. DU PONT). Both of them have contributed greatly to the deliberations of the subcommittee.

It is very clear to me after the experience of the past 4 years that our

Founding Fathers deliberately left some aspects of the war powers relationship very unclear.

Both the Congress and the President were given the tools for warmaking. These powers were in parallel to a surprising extent, and it may well be that our forefathers deliberately set the stage for a struggle between the Congress and the President in this very imporant field. In any event, the struggle has certainly ensued, and the debate here this evening is a part of that struggle. Regardless of what we do with this resolution in this Congress, I dare say the struggle will continue in some form and no doubt will continue as long as the Republic survives.

The President has obvious advantages. He has the opportunity for very swift action, even secret action. He has the unified branch of the Government. He is the one ultimately who makes the decision. No cumbersome parliamentary procedure is required for the President to reach a decision of policy, whether it applies to war policy or otherwise. He can act with dispatch.

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

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

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

Those of us sitting here in this body might well argue that President Kennedy exceeded his authority when he sent 18,000 troops to Vietnam—I think it was in 1962—and shortly thereafter converted them into combat forces. Where was his authority for so acting? Well, he did not have the necessity for finding an authority, because Congress made no reaction and expressed no approval or disapproval of what he had done. But still the cloud hangs over that decision.

I think this bill approaches the problem in a very rational manner, recognizing that there will be certain circumstances in which future Presidents will act without getting advance authority from the Congress in committing forces beyond our borders, but it provides a couple of, I think, very reasonable and very rational safeguards.

It provides, first of all, that the President may not continue this course of policy to which the Congress has not yet assented beyond 120 days. No President is going to want to be left high and dry and any President deciding on a course of action, whether it be the commitment of military forces in a foreign field or engaging in hostilities there, is going to think carefully before he gets himself in a position from which he may have to retire after 120 days. He is going to think carefully before making the fundamental decision, and then, once he has made that decision and set in train the sequence of events which will eventually terminate with the expiration of that period, he will surely use that time interval to try to sell his position to the Congress. He will not want to be left high and dry.

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

That is the concurrent resolution approach.

Mr. FRELINGHUYSEN. Will the gentleman yield?

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

Mr. FRELINGHUYSEN. I thank the gentleman for yielding.

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

Mr. FINDLEY. No. That interpretation is not justified. Under the terms of section 4, I think he would be much more careful in making a decision. I do not want to suggest that any President would take lightly the commitment of military force any place in the world, but there are degrees of care and reflection.

Mr. FRELINGHUYSEN. The gentleman suggests that the President would use the time to sell his position. This may well be one of the weaknesses of the proposal, because a President may escalate hostilities in order to sell the country on the advisability of the course of action he is undertaking.

In other words, it may have quite the opposite effect from what the gentleman is assuming. This proposal may well keep a President from making a wise decision with respect to commitment, or it may have him make an over commitment in order to emphasize the gravity of the situation.

Mr. FINDLEY. I argue exactly the opposite.

Mr. FRELINGHUYSEN. I know the gentleman does.

Mr. FINDLEY. The certainty, absent congressional approval, which would confront the President that on the expiration of the 120-day period he would have to withdraw any enlargement of his forces, disengage them from hostilities, would surely cause him to exercise the most extreme care before he made a fundamental commitment.

Furthermore, he would also be impelled to great care by the knowledge that at any point from the first day forward a majority vote of both Houses could direct him to disengage from that commitment.

I might add, Madam Chairman, that I would be glad to keep on yielding here to the Members, but I know the constitutionality of the concurrent resolution exists as an issue, and I suspect from what the gentleman from Wisconsin has said, time will run short before we know it. So, I would like to take a little time at this point to deal with that and related questions.

The war powers resolution of 1973 contains the machinery to assure more effective participation by Congress in future national decisions involving war and peace. First, in section 3 it requires the President to report to Congress any time he commits Armed Forces to hostilities outside the United States; commits Armed Forces equipped to combat to the territory, airspace, or waters of a foreign nation; or substantially enlarges the number of Armed Forces equipped for combat already located in a foreign nation. This provision is virtually identical to one which passed the House overwhelmingly in each of the last two Congresses.

While it is highly important that Congress be involved intimately in decisions which actually engage our forces in military hostilities, it is also essential that we be similarly involved in decisions which place our forces in circumstances where armed conflict may later develop.

The decision to place U.S. Armed Forces in foreign areas where hostilities may subsequently break out could well have greater and graver implications than a subsequent decision authorizing such forces to continue—or discontinue—their engagement in actual hostilities.

Certainly, the political, psychological, and emotional factors present when the earlier decision is made would be much more conducive to thoughtful, objective deliberation than later when guns are blazing. On the later occasion, our forces and our flag would be under attack. Concern would center on the safety of our forces and the broad—and important—questions of national honor, prestige, and influence. At that juncture, the wisdom of our presence could not receive the same dispassionate consideration that would have been possible earlier.

Most Americans, I would judge, today believe the United States acted unwisely when it first placed forces equipped for combat in South Vietnam. They would like to turn the calendar back and not have them there at all, regardless of the consequences for the South. But, primarily because our forces and our flag were under attack, many of these same people opposed a quick departure of our forces, and as today's votes show clearly, many Congressmen still support the bombing of Cambodia.

Unfortunately, the Congress did not deal directly and promptly with the ques-

tion as to whether the initial commitment of forces equipped for combat to Vietnam was either constitutional or in the national interest.

Congress was never called upon to grant specific approval in connection with the stationing by President Kennedy of 16,000 troops equipped for combat in Vietnam in 1962, troops which were initially identified as military advisers but soon were given direct combat responsibility.

While we cannot turn the calendar back, hopefully we can profit from this experience. You can establish rules which will enhance the likelihood that in similar future circumstances—before fighting breaks out—Congress will receive promptly a formal written report from the President detailing and justifying the steps he has ordered. Upon such a report, hearings could be expected. Congress, if it deemed such advisable, could pass judgment on the wisdom, propriety, constitutionality, and necessity of the action reported.

Under sections 2 and 3 of the war powers resolution, the President must give attention to a detailed report to Congress at the very time he ponders a decision to commit military forces to foreign territory or to enlarge substantially forces already there. At the very least, this would remind the President and his advisers forcibly and before the commitment is made of congressional responsibility and authority in this area.

As a practical matter, this reporting requirement should also cause the President to consult directly with the legislative branch before making the final decision on force commitment.

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

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

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

The enlargement of our forces in Europe in 1951.

The sending of reinforcements to Berlin after the German border was closed in 1961.

The deployment of our troops in Thailand in 1961–62.

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

The sending of Marines to the Dominican Republica in 1965.

The bombing of Laos in early 1971.

Present activities over Cambodia.

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

Each of these force movements was undertaken without specific prior authorization of the Congress. Each involved armed conflict or the definite risk thereof. Most importantly, several of the instances would not have invoked the provisions of the war powers bill sponsored by Senator JAVITS and widely endorsed in the U.S. Senate, while each would have required a report to Congress under House Joint Resolution 542.

Had this reporting requirement been in effect in 1962 when the number of U.S. advisers in Vietnam was raised from 700 without combat gear to 16,000 equipped for combat, President Kennedy would have been required to explain promptly and in writing to Congress the circumstances necessitating his decision, the constitution or legislative provisions under which he took such action, and his reasons for not seeking specific prior congressional authorization.

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

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

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

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

Would the reports be so numerous as to bog down both the executive and legislative branches? Based on past history, the answer must be "No." Reports would be required only when the original force commitment is made, or when forces are substantially enlarged. Additional reports would not be required as personnel and equipment are rotated.

"Substantially" is open to varied definitions, but, I do not feel, admit of too much flexibility or is overly vague. A thousand additional men sent to Europe under present circumstances clearly would not "substantially enlarge" our 300,000 men already stationed there. A thousand men sent to Guantanamo Bay, Cuba, to "beef up" a 4,000-man contingent there would indeed be "substantial."

During consideration by the committee of the resolution, a question was raised as to the necessity and wisdom of requiring the President to include within his report "the estimated financial cost of such commitment or such enlargement of forces." Some thought "that information would be of no particular value to Congress," forgetting that when it was costing us more than $25 billion a year to fight the Vietnam war, that fact seemed quite important to most Americans who were beset by problems of inflation and poverty caused by the incredible expense of that war.

Some also questioned whether the financial information also "might be extremely revealing to an enemy." Yet, they raised no similar objection to the requirement that the President include in his report "the estimated scope of activities." Nor do they worry that in any case, the President will be required to outline the costs of a military commitment in the next defense or supplemental appropriations bill.

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

Congress can hardly regulate the Armed Forces as the Constitution requires if it does not even know where they are or where they are being sent.

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

If enacted, House Joint Resolution 542 will establish for the first time in our history a formal statutory relationship between the President and the Congress with respect to the stationing of military forces on foreign territory.

For the first time the President will be required to inform the Congress promptly and in detail as to what he is doing with military forces abroad and why.

Second, the war powers resolution provides that within 120 days after receiving this report, the Congress must specifically authorize the commitment of troops reported by the President or the troops must be withdrawn.

Third, within the 120-day period, Congress may by concurrent resolution order the disengagement from hostilities of American troops committed without specific congressional authorization.

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

Some objections have been made to the use of a concurrent resolution for this purpose. An examination of 200 years of American history, as well as the writings and opinions of the most prominent constitutional and legal minds of this century convinced me, and presumably the Foreign Affairs Committee that the use of a concurrent resolution to terminate hostilities is both constitutional and wise policy.

Use of a concurrent resolution to disapprove Presidential action is hardly new. Beginning in the 1930's, Congress regularly incorporated provisions for a legislative veto in legislation authorizing the President to effect a reorganization of agencies in the executive branch of the Government. All of the dozen or so Reorganization Acts of this century have contained a provision that disapproval

of the President's plan by either House of Congress would preclude the President from putting his plan into effect.

In the last decade five different reorganization plans submitted to Congress by the President have been vetoed by simple resolutions, three times by the House. On June 15, 1961, the House vetoed President Kennedy's plan to reorganize the Federal Communications Commission. On July 20, 1961, the House vetoed the President's plan to reorganize the National Labor Relations Board. On February 21, 1962, the House vetoed the President's reorganization plan for the Housing and Home Finance Agency. Many members of this body were present for these votes, as well as several more recent votes approving reorganization plans, and I do not recall even a whisper of criticism of this procedure as being unconstitutional.

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

> Most of the important legislation enacted for prosecution of World War II provided that the powers granted to the President should come to an end upon adoption of a concurrent resolution to that effect.

Among the examples that the Library cites were:

> Lend-Lease Act of March 11, 1941.
>
> First War Powers Act of December 18, 1941.
>
> Emergency Price Control Act of January 30, 1942.
>
> Stabilization Act of October 2, 1942.
>
> War Labor Disputes Act of June 25, 1943.

Other precedents where the effect of law is achieved by resolutions not submitted to the President include:

> Amendments to the Constitution.
>
> To set aside suspensions of the deportation of aliens by the Attorney General under authority vested in him by the Alien Registration Act of 1940.
>
> To disallow or set aside dispositions of federally owned property, including obsolete vessels owned by the Department of the Navy and surplus rubber plants.
>
> To reject executive agreements with other nations providing for the exchange of atomic energy materials.
>
> To override a Presidential determination not to abide by an import duty increase recommendation of the Tariff Commission.
>
> To effectuate allocations of highway aid to the States recommended to Congress under the Federal Highway Act of 1956.
>
> To terminate foreign aid to a given country.

Two precedents are particularly significant and relevant to the war powers bill. The Middle East resolution and the Gulf of Tonkin resolution both provided for the commitment of U.S. forces to hostile action, and both provided for the termination of that commitment by concurrent resolution.

The use of concurrent resolutions for such purposes has also been cited approvingly by the Supreme Court. In 1941, in the case of Sibbach against Wilson & Co., the validity of the Rules of Civil Procedure for the district courts of the United States was challenged. The Court stated:

> Moreover, in accordance with the Act, the rules were submitted to the Congress so that that body might examine them and veto their going into effect if contrary to the policy of the legislature.
>
> The value of the reservation of the power to examine proposed rules, laws and regulations before they become effective is well understood by Congress. It is frequently, as here, employed to make sure that the action under the delegation squares with the Congressional purpose . . . That no adverse action was taken by Congress indicated, at least, that no transgression of legislative policy was found.

In addition to the dozens of precedents, most legal authorities agree that the Congress may use a concurrent resolution as a means of checking Presidential decisions. The most eminent constitutional lawyer of the century, Prof. Edward S. Corwin, has written:

> It is generally agreed that Congress, being free not to delegate power, is free to do so on certain stipulated conditions. Why, then, should not one condition be that the delegation shall continue only as long as the two houses are of the opinion that it is working beneficially . . . To argue otherwise is to affront common sense.

Prof. Louis Henkin, of the University of Pennsylvania and Columbia University, author of a recent book entitled "Foreign Affairs and the Constitution," agrees. Speaking of the use of concurrent resolutions he states:

> By the devices described, Congress is not repealing or modifying the original legislation but is exercising power reserved in that legislation. Surely Congress should be able to recapture powers it delegates to the President without the consent of the agent.

The Senate Foreign Relations Committee has been considering a bill which would permit the Congress by concurrent resolution to repeal Executive agreements. Testifying in favor of the constitutionality of this approach have been: former Supreme Court Justice Arthur Goldberg; Prof. Richard Falk of the Woodrow Wilson School at Princeton; and Prof. Henry Field Haviland, Jr., director of the Fletcher School of Law and Diplomacy at Tufts University.

Prof. Raoul Berger of Harvard University, who testified before the National Security Subcommittee on the war powers bill and who reviewed section 4 (c) containing the concurrent resolution approach, has written:

> Of course, I vastly prefer your concurrent resolution approach to the view that a presidential war may be terminated only by joint resolution, which requires the concurrence of the President. The latter approach represents still another abdication. . . .

Several attorneys general have also supported the constitutionality of the legislative veto, beginning as early as 1854. In that year, Attorney General Cushing stated:

> Of course, no separate resolution of either House can coerce a Head of Department, unless in some particular in which a law, duly enacted, has subjected him to the direct action of each; and in such case it is to be intended, that, by approving the law, the President has consented to the exercise of such coerciveness on the part of either House.

In 1949, a memorandum prepared by the Department of Justice found the two-House form of the veto to be definitely constitutional.

One of the notable exceptions to this overwhelming preponderance of legal opinion in favor of the use of concurrent resolutions for this purpose is former Attorney General and now Secretary of State William P. Rogers. In 1958, he delivered an opinion to President Eisenhower that the concurrent resolution might be so used only if a two-thirds vote were required. Thus, it is not surprising that today, as Secretary of State, he takes a dim view of the legislative veto, despite the weight of historical precedent and legal opinion against his position.

The use of a concurrent resolution to require the President to disengage U.S. troops from hostilities is also wise policy.

This resolution recognizes that often the President has assumed the power to engage U.S. forces in hostilities, going far beyond what can be justified on the basis of his Commander in Chief function, and in the absence of any specific delegation of authority by Congress. Realizing that certain circumstances might make such an assumption of power necessary and desirable, the committee does not attempt to preclude the President from acting in such circumstances.

In the Senate, the Javits bill which passed that body last year, takes just the opposite approach. The Senate Foreign Relations Committee has spelled out four circumstances only in which the President may employ U.S. troops in hostilities without first coming to Congress for approval.

The House Foreign Affairs Committee felt it would be unwise to draw such rigid lines between the President and Congress, or to define in advance all of the circumstances under which the President could act. To do so might prevent the President from acting in a crisis situation. It might cast doubt upon our U.S. defense commitment at home or elsewhere in the world.

In order to preserve the maximum amount of flexibility in the war powers resolution, the Foreign Affairs Committee does not attempt to preclude the President from acting in a circumstance where he determines that the need for action is immediate and precludes prior congressional authorization. Realizing that the standards are vague, the House bill requires the President to explain and justify to Congress why he has assumed the power to commit troops to hostilities. If Congress approves of the assumption of power, it may ratify it. If it does not approve, it may let the powers lapse after 120 days, or terminate them sooner by concurrent resolution.

The point is that the Constitution delegates the authority to declare war to the Congress, not to the President. It is Congress which must raise armies and navies, make rules governing them, call forth the militia, and organize and pay for it all. The President's only constitutionally specified power is that of Commander in Chief, which is hardly a mandate for Presidential warmaking.

The war powers resolution would in no way inhibit the President from using troops to defend the United States or repel attacks. Congress may by concurrent resolution order disengagement of U.S. troops from hostilities only when

they "are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or other specific authorization of the Congress." Thus, if there is an attack upon the United States itself, a concurrent resolution would not be appropriate. And I might add surely, no Member of Congress would wish to disengage our troops under such circumstances.

Finally, if the House in its wisdom decides to retain section 4(b) requiring that Congress act within 120 days to ratify the commitment of troops, then it would be logically inconsistent for the House to delete section 4(c) or to require a joint resolution of disapproval.

Under section 4(b), after 120 days the Congress may by inaction force the President to terminate a commitment and disengage troops engaged in hostilities abroad. It would be ironic indeed if the Congress could require the President to disengage our troops by inaction, but could not require the President to disengage those same troops by passing a concurrent resolution as provided for in section 4(c).

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

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

The amendment procedure simply states:

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

The Constitution does not state whether the President shall sign a resolution proposing an amendment, and therefore the explicit requirement of section 7 of the Constitution would seem to require that the President sign constitutional amendments. As early as 1798, the Supreme Court decided in Hollingsworth against Virginia that a Presidential signature was not required, section 7 of the Constitution notwithstanding.

Thus, although the ratification by three-fourths of the State legislatures might be analogous to a Presidential signature, it cannot be squared with the explicit constitutional requirement that "Every order, resolution, or vote—shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him."

Again, the exceptions are legion.

Hinds Precedents is anything but conclusive upon the question of whether such a concurrent resolution must be presented to the President for signature. In chapter XCII, Hinds states:

> "*In general,* orders, resolutions, and votes in which the concurrence of the two Houses is necessary must be presented to the President on the same conditions as bills" (emphasis added).

He then goes on to say:

> Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect.

Thus Hinds acknowledges that there are exceptions.

Hinds stopped compiling his precedents in 1907. Since then, as noted in the response to question one, literally dozens of bills have specified that Congress may by concurrent or simple resolution take legislative action. Hinds would today have a whole new body of precedents to compile.

No example has been found wherein the Congress used a concurrent resolution to repeal the President's authority under the five bills cited above. However, Congress has five times in the last decade used a simple resolution to repeal the President's authority to carry out certain reorganization plans he has proposed.

President Franklin D. Roosevelt asked his Attorney General to prepare a memorandum questioning the constitutionality of section 3(c) of the Lend-Lease Act of 1941, which provided for Congress to terminate the delegation of powers contained in the act by a concurrent resolution. The memorandum was never made public and was found in Roosevelt's private papers after his death. Roosevelt signed the Lend-Lease Act without a whisper of dissent. Thus, it can hardly be said Roosevelt's private dissent on this one section of the act negates 200 years of constitutional history.

The attempt by Roosevelt to reserve the judgment upon the effectiveness of repeal by concurrent resolution by means of a written dissent—private or public—while signing the bill into law at the same time is of no force for yet another reason. Returning to Hind's precedents, in paragraph 3492 we find that in 1842, President Tyler signed a bill and filed with it his reasons for doing so:

> Mr. John Quincy Adams, of Massachusetts, said that this message was a novelty in the history of the country. The Constitution required the President, if he approve a bill, to sign it and not accompany his signature with reasons. After dwelling on the dangers of the precedent Mr. Adams moved that the message be referred to a select committee.

The report of that committee referring to the President states:

> No power is given him to alter, to amend, to comment or to assign reasons for the performance of his duty. His signature is the exclusive evidence admitted by the Constitution of his approval, and all addition of extraneous matter can, in the opinion of the committee, be regarded in no other light than a defacement of the public records and archives.

Thus, while the Roosevelt memorandum is an interesting historical footnote, it is neither constitutional nor relevant to the subject under consideration. If Roosevelt felt that the concurrent resolution was unconstitutional, then according to the Constitution he should have vetoed the Lend-Lease Act so stating. Anything less was null and void.

It is a fact that Congress repealed the Gulf of Tonkin resolution with an amendment to the military sales bill, rather than acting upon the concurrent resolution passed by the Senate. This was a matter of convenience, not of constitutional principle. The record does not show any support whatsoever for inferring that the House acted as it did out of fear that a concurrent resolution was insufficient. What is clear is that the Senate obviously felt that a concurrent resolution was sufficient to repeal the Gulf of Tonkin resolution.

The "necessary and proper" clause of the Constitution states:

> The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . .

The war powers resolution is a joint resolution which must be signed into law by the President in order to have effect. If the "necessary and proper" clause is held to preclude the use of concurrent resolutions such as in 4(c), then it must also be held to prohibit the use of concurrent and simple resolutions for virtually all purposes I have enumerated. Such a result would be absurd and obviously at variance with the intentions of the Founding Fathers and 200 years of constitutional history.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. YOUNG of Florida. Madam Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Forty-two Members are present, not a quorum. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 280]

Abzug	Broomfield	Diggs
Adams	Brown, Calif.	Dorn
Addabbo	Burke, Calif.	Drinan
Alexander	Burlison, Mo.	Dulski
Anderson, Calif.	Butler	Edwards, Calif
	Byron	Ellberg
Anderson, Ill.	Carey, N.Y.	Esch
Archer	Casey, Tex.	Eshleman
Arends	Cederberg	Evans, Colo.
Ashbrook	Chamberlain	Evins, Tenn.
Ashley	Chisholm	Fish
Badillo	Clark	Fisher
Baker	Clawson, Del	Flynt
Barrett	Clay	Ford,
Beard	Collins, Ill.	William D.
Bell	Conable	Forsythe
Bevill	Conyers	Fraser
Biaggi	Corman	Frey
Bingham	Crane	Froehlich
Blatnik	Daniel, Dan	Fulton
Bolling	Danielson	Fuqua
Bowen	Davis, Ga.	Gettys
Brademas	Davis, Wis.	Gray
Breaux	Derwinski	Green, Oreg.
Brooks	Dickinson	Green, Pa.

Gross	Moorhead, Calif.	Shriver
Gubser	Moorhead, Pa.	Sikes
Guyer	Mosher	Sisk
Hanna	Moss	Smith, N.Y.
Hansen, Idaho	Murphy, N.Y.	Stanton, James V.
Hansen, Wash.	Nedzi	Stark
Harsha	Nelsen	Steed
Harvey	Nichols	Steiger, Ariz.
Hastings	Nix	Steiger, Wis.
Hawkins	O'Hara	Stephens
Hays	Owens	Stubblefield
Hébert	Patman	Stuckey
Heckler, Mass.	Perkins	Sullivan
Hillis	Peyser	Symington
Hogan	Pickle	Symms
Horton	Pike	Teague, Calif.
Howard	Poage	Teague, Tex.
Hungate	Powell, Ohio	Thompson, N.J.
Hunt	Preyer	Thomson, Wis.
Hutchinson	Railsback	Thornton
Johnson, Pa.	Rangel	Tiernan
Jones, Ala.	Rarick	Treen
Karth	Rees	Ullman
King	Reid	Van Deerlin
Kluczynski	Rhodes	Vander Jagt
Koch	Riegle	Vanik
Kuykendall	Robison, N.Y.	Vigorito
Kyros	Roe	Whitehurst
Landrum	Roncalio, Wyo.	Whitten
Leggett	Rooney, N.Y.	Widnall
Lehman	Rooney, Pa.	Wiggins
Long, Md.	Rosenthal	Wilson, Bob
Madigan	Runnels	Winn
Martin, Nebr.	Ruth	Wright
Mathias, Calif.	Ryan	Wyatt
Meeds	St Germain	Wylie
Mezvinsky	Sandman	Yates
Michel	Satterfield	Yatron
Mills, Ark.	Scherle	Young, Alaska
Minshall, Ohio	Schneebeli	Young, S.C.
Mizell	Shipley	Zion
Montgomery		

Accordingly the Committee rose; and the Speaker having resumed the chair, Mrs. GRIFFITHS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the joint resolution House Joint Resolution 542, and finding itself without a quorum, she had directed the Members to record their presence by electronic device, whereupon 236 Members recorded their presence, a quorum, and she submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Chair would like to advise the Members that 1 hour and 36 minutes of time remain, and 100 Members are a quorum.

Mr. MAILLIARD. Madam Chairman, I yield 8 minutes to the gentleman from Delaware (Mr. DU PONT).

Mr. DU PONT. Madam Chairman, I rise in support of House Joint Resolution 542, a bill which I believe offers the Members of this body an opportunity to reassert the powers authority vested in them by the Constitution. As a member of the subcommittee which drafted the bill, and as one of its sponsors, I believe it is a strong bill, a good bill, and one that deserves passage.

When the subcommittee began their extensive deliberations on war powers legislation, I will be frank to admit that I was skeptical about our ability to draft a bill which effectively reasserted the warmaking powers of the Congress but which also retained sufficient flexibility to comport with the design of the Constitution. As the hearings and markup sessions concluded, I was convinced that the committee had not only drafted a workable bill, giving Congress an effective role in warmaking powers but that passage of the bill is essential if the Congress is going to fulfill its constitutional obligations.

The need for this legislation does not simply arise out of the tragic involvement in Southeast Asia. I think the war in Vietnam represents the culmination of a historical decline in the assertion of congressional prerogatives in warmaking authority. In the early days of the Republic, the executive and the Congress worked in close cooperation with one another, often resulting in the President deferring to the opposition, to an active Congress. By World War II the Executive made commitments abroad totally independent of the will of the Congress; after World War II, in Korea, the Dominican Republic and Southeast Asia, the warmaking powers had shifted completely from the Congress to the Executive after the fact. Absent any positive action by the Congress, there is little evidence to suggest this trend will reverse. Continued acquiescence by the Congress, can only lead to a domination by the Executive in warmaking authority in direct conflict with the intent of the framers of the Constitution. While it is naturally more expedient to conduct warmaking functions through the Executive alone, the drafters of the Constitution consciously avoided concentrating in the Executive the authority to unilaterally lead the country to war. In retrospect, this country has moved too far from this ideal. We can no longer allow the institutional advantages of the Executive to become justification for further erosion of congressional warmaking power.

Much will be heard in debate today about the Constitution, about what that Constitution says or does not say about the war powers of the Congress. I would like to address myself to that specific question.

I believe that the Constitution gives to the Congress, not to the Executive but to the Congress, the power to commit the United States to a cause of war. Debate during the Constitutional Convention made it very clear that the delegates felt that the risk of economic and physical sacrifice during a war, and the serious legal and moral consequences that flow from the use of force against a foreign sovereign, were sufficiently grave that the elected representatives of the people should express their approval of such action.

Of course the practice has been very different from the theory; we have seen an almost total erosion or perhaps abdication of congressional input into foreign policy decisions. The Executive has been preeminent.

All Members of this body have heard the arguments in support of expanded Executive power. I think most of the arguments are based on Executive practice rather than on the letter and spirit of the Constitution itself. Both the Constitution and the notes taken at the Constitutional Convention add great weight to the argument that Congress, not the President, was to be vested with the dominant role in warmaking powers. I think it is significant that the Constitution contains six express grants of warmaking and related authority in article I, section 8, clauses 11, 12, 13, 14, 15, and 16. In comparison there is only one such grant of authority for the President under article II, section 2, which vests him with the powers of Commander in Chief of the Armed Forces.

The notes made by both Hamilton and Madison at and after the Constitutional Convention support the theory that the Congress was preeminent in the field of warmaking. The American Constitution was going to avoid the European example of giving to the Executive broad powers to unilaterally commit the Nation to war. Even though Hamilton argued that foreign policy was inherently an Executive function, implementation of that policy must depend on the independent authority of the Congress. Against this background, I find unpersuasive arguments that cite the Commander in Chief clause as the basis for the grant of broad, independent warmaking authority. On the contrary, I think the limited references to the President's authority make him, as Hamilton stated, "The first general and admiral of the confederacy."

At the very least the Constitution and its legislative history show that Congress and the President were intended to be partners in warmaking. The weight of evidence suggests that Congress was intended to be the dominant partner, retaining the independent authority to commit the Nation to hostilities.

The practice of the Executive, however, has resulted in a total reversal of the letter and spirit of the Constitution. As Members of Congress sworn to uphold the Constitution, we have a duty to protect and exercise the powers granted to us by the Constitution. We have a clear choice of action. We can condone that reversal that has taken place and allow the practice of history to dominate the express provisions of the Constitution. That choice, I believe, would effectively abandon the ideal proposed by the drafters of the Constitution. Our alternative is to reverse the trend of history, and restore Congress to a position of partnership in shaping warmaking policy. House Joint Resolution 542 is, in my estimation, a bill which closely reflects the intent of the Constitution, and would set in motion the machinery necessary for making Congress an effective force in shaping the Nation's armed policy abroad.

First, House Joint Resolution 542 would give the Congress the ability to fulfill its constitutional responsibilities for warmaking powers. The consultation provisions and the reporting requirements will give the Congress the intelligence necessary to carry out the obligations mandated by the Constitution. In the past, the Congress has not had adequate information to effectively direct foreign policy decisions, particularly when complex issues about directing a war were at issue. By requiring the President to keep the Congress abreast of significant changes in our foreign policy posture, the Congress will be able to impact the policy at each stage of development. This stands in sharp contrast with the present practice of coming to Congress after the commitments have already been made.

Second, section 4 gives Congress the capacity to exert greater control over the Executive's commitment of Armed Forces abroad. I think the heart of this section is subsection C which provides that the Congress may direct, by concurrent resolution, the President to disengage from hostilities. I think this procedure is fully consistent with the Constitution. If the President was going to abide by the letter of the Constitution he would have to have the support of a majority of both Houses of Congress. In fact, a simple majority in one House could block a declaration of war. Therefore, if a President acts without the prior consent of the Congress, it logically follows that a simple majority of both Houses should be able to direct him to disengage from hostilities. We have simply reversed the chronology of the legislative process because the Executive decided to act prior to congressional authorization. It has been argued that if the Congress passed a bill requiring the President to disengage Armed Forces abroad, the President could veto it and both Houses of Congress would have to pass it by two-third vote before it became binding. I do not think that the framers of the Constitution intended to create this obstacle to withdrawing the Nation from a course of war when the President acted unilaterally. To remove any doubt about procedure, section 4(c) should be enacted to reaffirm the ideal that the Congress and the President are partners in warmaking. I think that is wholly appropriate that when the majority of both Houses disagrees with a course of action, then the President no longer has the authority to act unilaterally. Without the approval of both Houses of Congress there can be no valid warmaking power.

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

Unfortunately, we have little judicial precedent to look to for guidance. I want to point, however, that as Members of Congress we are sworn to uphold the Constitution. We ourselves have the ability to make precedent. While I have heard objections that this bill contains provisions of dubious constitutionality, I do not see how a return to the letter and spirit of the Constitution could be considered questionable. We are not creating any new policies here; we are simply trying to reverse the persistent erosion of our constitutional obligations. In fact, I have serious doubts about the exercise of Presidential authority that we have witnessed in the last 50 years. Critics of this bill refer to Presidential powers which I see as supported only by the gloss of practice. Nowhere in the Constitution do I see a requirement that two-thirds of both Houses are required to make a President disengage from hostilities that he initiated unilaterally, without prior consent of Congress. Perhaps that is the direction that our history has taken us: However, I am not ready to abandon the letter and spirit of the Constitution for the interpretation by the gloss of practice.

I urge the Members to read this bill in the context of the checks and balances embodied in the Constitution. The drafters intended to safeguard the Nation against unchecked Executive decisions to commit the country to a trial of force. While institutional advantages have caused the Congress to delegate its responsibilities in foreign policy and warmaking authority, this should not obviate the need for requiring safeguards from the body most directly representative of popular sentiment. I can think of no decision that is more important to bring before the people than the commitment to war. Such a decision involves a risk of great economic and physical sacrifice that should not be incurred without approval from the people and their elected representatives. The very act of war entails moral and legal consequences so significant that an expression of popular approval should be required. I believe that House Joint Resolution 542 provides that Members of this body with the instrument that will insure the awesome decision to go to war will be brought directly before the body most directly of the people, a result that was intended by the Constitution.

DETAILED ANALYSIS OF THE CONSTITUTIONAL BACKGROUND OF HOUSE JOINT RESOLUTION 542

It has been frequently contended that the powers conferred on the Congress by article I, section 8 and those conferred on the President in article II, section 2 are logically incompatible. While there is an apparent conflict over the delegation of warmaking authority, there is ample evidence to show that the drafters of the Constitution intended to give the Congress the primary responsibility for making war, consciously avoiding the pattern of broad authority enjoyed by the monarchs of that period.

Because article I, section 8 is the only instance where warmaking powers are expressly mentioned, constitutional scholars have attached great significance to the amendment that changed clause 11 from the power to "make war" to the power to "declare war." Some have suggested that the change was designed to restrict the role of Congress to a more formal or ceremonial function, implying that the substantive responsibility lay with the Executive. The debate was not well reported, but there is strong evidence that the amendment was in no way intended to weaken congressional prerogative. This view is reinforced by the notes of both Hamilton and Madison. Hamilton later wrote in the Federalist that the Executive normally had the power to embark on war, but in the United States this power was deliberately reserved for the legislature. There is additional evidence, supporting the contention that the change in wording was designed to relieve Congress from the day-to-day responsibility for conducting war. The most expansive views that is supportable is that the wording would make clear that the President had the authority to repel sudden attacks.

In contrast to this evidence supporting congressional preeminence in warmaking authority, the Executive has only been given express authority to be the Commander in Chief of the Armed Forces. This is hardly a persuasive grant of broad authority in contrast to the specific grants conferred upon the Congress. A strict reading of that clause would make the President, as Hamilton termed it, the "first general and admiral of the Confederacy." The President's authority, however, has been considerably expanded by the interpretation of article II, sections 1 and 3, which give the President executive power and require him to take care that the laws be faithfully executed. This has been construed to mean that the President has the power to enforce the laws of the United States by any means he finds necessary—In re *Neagle*, 135 U.S. 1—and in practice this has meant that he has the power to maintain internal order and repel sudden attack.

Analysis of this legislative history suggests that the framers never intended troops to be used outside the country without congressional consent. Since neither a standing army or navy was thought necessary by the framers any military venture would have by necessity required congressional authorization of the expedition by raising troops or calling up the militia. Even where troops were available for foreign deployment, the Executive came to the Congress during the Nation's first 25 years under the Constitution. Despite this intent and early practice, rapid expansion of Presidential use of power abroad took place. The expansion began with the theory that the duties of the President included the power to protect U.S. citizens and property abroad. By the end of the 19th century, the power had expanded to the point where the executive power included a great variety of interests defined as foreign policy objectives.

Concurrent with this development of foreign policy powers, the President was recognized to have the inherent power to conduct the national defense. Foremost in the minds of those who recognized the importance of such powers was the fear of a territorial invasion. In the modern context, however, global confrontation gave rise to the notion of linking the national interest to extraterritorial security interests. This recent expansion of power leads the power of the President into collision with the warmaking powers of the Congress. While it is well recognized that the President must still be left with the power to judge in the first interest whether a given event constitutes an imminent threat to our survival and demands a response which leaves no time to seek the Congress acquiescence in that decision. This limited discretion falls far short of the assumption that the President, because of his defensive powers, may act unilaterally whenever the interest jeopardized is labeled as a "vital security interest." The authority for the unilateral acts taken by the Presidents in the last 20 years rest on questionable constitu-

tional grounds, and at minimum represents policy which the Congress must seek to curtail.

Early American history indicates that the result we have reached today was by no means inevitable. We have endowed increasing amounts of authority in the President yet this seems to be based in expediency rather than necessity.

In the first 125 years of the Republic, there was genuine cooperation between the President and the Congress, often resulting in deference to the legislative will regarding the initiation of foreign conflicts. At one point Jefferson refused to permit the American naval commanders to do more than disarm and release enemy ships guilty of attacks on the United States until he had received congressional approval for the First Barbary War. Congress took an active role in opposing executive action—Pierce in Cuba, Seward in Alaska, and Grant in Santo Domingo, and the Executive acquiesced.

Between 1900 and 1945, close cooperation between the Executive and the Congress became the exception rather than the rule. The trend gained full momentum under Theodore Roosevelt. He acted unilaterally in South America and in the Orient, when he sent several thousand troops to the Boxer Rebellion. Franklin Roosevelt continued the practice of bypassing the Congress by exchanging 50 destroyers for British bases in the Western Atlantic, by occupying Iceland and Greenland and by ordering the Navy to convoy ships carrying lend-lease supplies to England.

We entered a period of almost total acquiescence by the Congress in the 1950's and 1960's. The broad blanket of national security interest provided the basis for a bipartisanship support which led us through the cold war. Formosa, Korea, Lebanon, Cuba, the Dominican Republic, and the initiation of the war in Southeast Asia were all Presidential decisions.

Understandably, the shift to Presidential hegemony in warmaking authority did not occur without reason. The executive branch proved to be institutionally superior to the Congress for conducting wars and even for initiating them. The Executive has the advantage of unity of office and purpose as well as the command of a vast intelligence network. The Executive also has the ability to act quickly and in secret, two attributes not commonly associated with the Congress. This, however, is not to suggest that Congress should not still be the ultimate repository of warmaking powers. To the contrary if the framers had decided that expediency and secrecy were the premium qualities in warmaking, they would have vested the power in the President. Instead they decided that warmaking must necessarily involve popular approval, and the power should lie with the Congress. We must not substitute expediency for the wisdom of the framers in establishing their ideal of government.

If Congress has not been adequate as the body to make warmaking decisions, then the institution must be changed to meet the need. Unfortunately history shows that we have too easily cast off constitutional duties to the Executive, because of its institutional superiority. We must reform our institution so that it meets the demands of the times and enables us to implement the duties delegated to us under the Constitution.

I believe that House Joint Resolution 542 makes the necessary institutional changes so that Congress may once again, effectively and responsibly discharge its warmaking powers and duties. First, the bill will enable the Congress to have the ability to participate in warmaking decisions. Under the reporting provisions of the bill, Congress will be provided with a steady flow of information about our foreign policy posture position abroad, especially as it related to potentially hostile activities. This will be an important factor in making sure that the Congress will not be confronted with a situation that is so well developed that the events themselves have dictated future courses of action. Too often in the past Congress has been handed a fait accompli and given little choice but to approve and finance the action. I think the consultation provision and the broad reporting requirements will arm the Congress with the means to become a responsible partner in foreign policy.

Beyond the reporting provisions which will give the Congress the ability to carry out its warmaking responsibilities, section 4 of House Joint Resolution 542 is the fulcrum which will give the Congress the legislative leverage to assert its warmaking authority. The bill not only provides a time limit on a President's commitment of troops without prior congressional authorization, but it provides for the termination of such commitment by concurrent resolution passed by both Houses of Congress. This is at the heart of the bill and embraces a policy which I think accurately reflects the intention of the framers of the Constitution. Because questions have been raised about its constitutionality, I would like to discuss this mechanism in some detail.

As the committee report notes, the use of a concurrent resolution to veto executive action has become a common legislative device in the last 40 years. The report covers this aspect adequately, and I would only point out that the Gulf of Tonkin resolution, which provided for termination of authority by concurrent resolution was passed with no debate over that particular provision, nor was there any question about its constitutionality when it was signed into law by President Johnson.

I think the theoretical basis for this procedure is well-founded and based in the Constitution. The Constitution grants to the Congress warmaking powers, and under recognized constitutional precedent, the Congress may delegate authority with which it has been vested. Congress may also retract that which it delegates; this is the legal justification for the disapproval of reorganization plans by simple resolution. House Joint Resolution 542 makes such a provision grant of authority by giving the President the power to commit troops abroad without prior consent of Congress. He does so, however, under the condition that Congress may retract that authority by majority vote of both Houses. This does not run counter to article 1, section 7, because Congress has simply delegated power in advance and since they are the source of that power, the moment the power is terminated by concurrence of both Houses, the President's provisional authority has been terminated. The essence of this argument is supported by Harvard's well-known constitutional law expert, Paul Freund. I wrote him a letter requesting his opinion of the constitutionality of section 4(c) and I am enclosing the text of his reply at this point in the RECORD:

JUNE 12, 1973.

Hon. PIERRE S. DU PONT,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DU PONT: I am glad to respond to your letter of June 1, inviting an expression of my views on the validity of section 4(c) of H.J. Res. 542, providing that a concurrent resolution of both Houses of Congress may require the President to disengage military forces from action outside the territory and territorial waters and airspace of the United States, where the commitment of armed forces was made without prior authorization of Congress.

During the past thirty-five years Acts of Congress have not infrequently provided that in administering the Act operative legal effect is to be given to a concurrent resolution or to the action of one House. This practice has brought forth discussion in and out of Congress on the constitutional aspects of the subject. A survey of pertinent legislation and commentary as of 1953, is contained in Ginnane, "The Control of Federal Administration by Congressional Resolutions and Committees," 66 Harv. L. Rev. 569 (1953).

The present question, however, lies in a narrow compass. It is well to indicate that it does *not* involve the situations listed below, each of which raises distinct questions:

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

2. Disapproval by concurrent resolution of executive action in a matter over which the President has paramount constitutional power—e.g., the appointment of executive or military officers.

3. Disapproval by concurrent resolution of executive action in a matter committed by Act of Congress to the executive—e.g., the Reorganization Act of 1939 and its successors.

4. Termination of statutory authority by concurrent resolution. See Robert H. Jackson, "A Presidential Legal Opinion," 66 Harv. L. Rev. 1353 (1953).

The present question arises in a field where the legislative and the executive branch each has its constitutional responsibilities, the Congress (by ordinary legislation) to declare war, the President to act as Commander in Chief. The President, it may be premised, has emergency powers to protect American interests abroad by commitment of armed forces, but the plenary power to engage in continuing hostilities is vested in Congress. Congress may authorize the continuance of the Presidential action through ordinary legislation. If, on the other hand, Congress is unwilling to prolong the emergency action into a state of war it may assert its authority for that purpose. The most appropriate medium for such assertion by Congress is a concurrent resolution. In this way it makes clear that one crucial element in the lawmaking process necessary for the making of war is lacking—the approval of Congress.

My conclusion is that, on the substantive premises of the bill, the provision respecting a concurrent resolution is a valid and appropriate measure, and does not raise constitu-

tional issues of the kind mooted in connection with other categories of legislation.

With kindest regards,

Sincerely yours,

PAUL A. FREUND.

The concurrent resolution mechanism is also supported by logical analysis of the legislative process. For example, if the President were faced with a situation where no emergency existed and he came to the Congress for authorization this would comport with the intention of the Constitution. The Congress would proceed to consider either a declaration of war or antecedent authorization for use of Armed Forces abroad. Under the normal process the majority of one House could block the authorization and the President would lack the authority under the Constitution to proceed unless some extraordinary national security issue were at stake. Yet if the President decides to act unilaterally, under extraordinary circumstances, the Congress would have to vote by majority of both Houses to require disengagements. The opponents to section 4(c) then would argue that the Congress would have to vote by two-thirds if the President decided to veto the measure. The result is logically inconsistent. What it boils down to is that if the President goes to the Congress as he was supposed to under the Constitution a simple majority of one House can defeat his actions. Yet if the President acts unilaterally, without prior consent from Congress, in a manner not expressly recognized in the Constitution, but accepted as an extraordinary power, then the House must vote by two-thirds in each House to terminate his actions. This is an unreasonable obstacle to congressional assertion of power. It also would encourage the President to act first, because it takes far more opposition in Congress to defeat his actions.

The concurrent resolution is fully consistent with the design of the framers. Since war powers were expressly given to the Congress, logically all war power must flow from Congress. The President's authority then must be delegated by the Congress. Once the majority of both Houses withdraw that delegation of authority, his provisional authority has expired and he must accede to the will of Congress.

Mr. DENNIS. Madam Chairman, will the gentleman from Delaware (Mr. DU PONT), yield?

Mr. DU PONT. I yield to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, may I ask, does the gentleman believe that if the Congress passes a concurrent resolution under section 4(c) calling for the ceasing of hostilities, that resolution has the force and effect of law binding upon the President?

Mr. DU PONT. Yes, sir, I do, because we have the warmaking power to start with, and we are carving out of that an exception and we are giving the President the right to conduct warmaking operations until such time as the two Houses by a simple majority agree we should not do it.

Mr. DENNIS. If the gentleman will yield briefly, I would like to point out to him that Professor Corwin, in discussing article I, section 7, clause 3 of the Constitution which says every order, resolution, or vote in which the concurrence of the Senate and the House may be necessary shall be presented to the President, he states that means every resolution or order which is to have the force of law. "Necessary" here, he says, means necessary if a resolution is to have the force of law. A concurrent resolution is merely for a housekeeping matter for the Congress. The gentleman says this resolution has the force of law.

Mr. DU PONT. I do not believe when the Congress is carving out an exception that that rule applies. I would cite a letter I have which I will make a part of the RECORD from Professor Freund of the Department of Constitutional Law at Harvard University, which states in response to a specific question about 4C:

My conclusion is that, on the substantive premises of the bill, the provision respecting a concurrent resolution is a valid and appropriate measure, and does not raise constitutional issues of the kind mooted in connection with other categories of legislation.

So, in conclusion, I believe it is constitutional to have a delegation of power to the President taken back by a simple concurrent resolution, and I believe that is the heart of the bill.

Mr. FRELINGHUYSEN. Will the gentleman yield?

Mr. DU PONT. I yield to the gentleman.

Mr. FRELINGHUYSEN. The gentleman suggests that a delegation of power by the Congress can be rescinded by a concurrent resolution. The gentleman from Illinois also talked about delegation of power by the Congress to the President. However, I thought that what we are talking about is the constitutional authority of the President as Commander in Chief to commit troops overseas. Is the gentleman contending that the President has this power only because Congress in some way delegated it to him?

Mr. DU PONT. I do not know of anything in the Constitution that talks about the power of the President to commit troops overseas.

Mr. FRELINGHUYSEN. No one suggest the Constitution spells that out in one way or another. The gentleman is not answering my question. I am asking if he is suggesting the President's authority, and his decision to commit troops overseas, is unconstitutional unless the Congress specifically delegates that power to him, or specifically authorizes that use of troops before he makes the decision?

Mr. DU PONT. No. I am saying when the President commits troops or commits the Nation to a course of war he has an obligation to get congressional approval for that course. I think the Constitution is pretty clear on that.

Mr. ZABLOCKI. Madam Chairman, I yield such time as he may require to the gentleman from North Carolina (Mr. TAYLOR).

Mr. TAYLOR of North Carolina. Madam Chairman, I rise in support of House Joint Resolution 542 and am proud to be a cosponsor of this legislation which provides that the United States not be taken into any future war except a purely defensive action for a limited period of time unless the war has been declared by Congress.

I do not think that we should permit our Nation to be engaged in another war unless the war has a sufficient degree of public support to cause Congress, in its collective judgment, to vote a declaration of war. In my opinion, the President should not be permitted to conduct a future war at his own discretion. Congress should specify and assert its proper constitutional responsibility to share in committing our nation to war.

I believe that this procedure is in line with the Constitution which empowers Congress to declare war and empowers the President to respond to sudden attacks and to conduct the war once it has been declared.

Mr. BELL. Madam Chairman, I yield 10 minutes to the gentleman from Ohio (Mr. WHALEN).

Mr. WHALEN. Madam Chairman, many times throughout the history of our country American troops have been committed to combat without the formal approval of the U.S. Congress. Indeed, after World War II U.S. troops have been involved in two major conflicts without any formal declaration of war. It seems to me, therefore, that one of the important problems confronting the Congress as we enter this post-Vietnam era is to enact war powers legislation which would accomplish two things:

First, as suggested by the distinguished chairman of the subcommittee (Mr. ZABLOCKI) we need a vehicle which would redress the imbalance in the warmaking power. At the present time, without a declaration of war, the President has taken this opportunity of committing American troops without the possibility of congressional rejoinder.

Congress, of course, has seen fit not to use its appropriation powers in response, at least, up until today.

Second, we need a bill which would give to the Congress an opportunity to express its views on the important question of war or peace, life and death of American servicemen.

I think that the measure which was brought out by the subcommittee headed by the gentleman from Wisconsin (Mr. ZABLOCKI) goes a long way toward meeting these objectives. I, therefore, would like to add my compliments to the gentleman from Wisconsin (Mr. ZABLOCKI) and to the members of the gentleman's subcommittee for the very fine work that they have done.

I do believe, however, that the measure which is before us is defective. Its principal defect, insofar as I am concerned, is found in section 4(b). Section 4(b), as has already been discussed, permits the Congress by inaction to arrive at a major policy decision regarding the most significant matter confronting the U.S. Congress—the question of war or peace. I think that is wrong.

I think it is wrong for three reasons: First, as written section 4(b) perpetuates an imbalance in the warmaking power. It merely shifts shoes from one foot to the other, from the President to the Congress.

Second, it perpetuates the tendency on the part of Congress to abdicate its re-

sponsibilities in dealing directly with the major issues confronting our country.

And, third, it may deny to the Members of Congress the opportunity to voice their views on this major question of war or peace, life and death of American servicemen.

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

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

The amendment reads as follows:

Within 120 calendar days after a report is submitted or is required to be submitted by the President pursuant to section 3, the Congress by a declaration of war or by the passage within such period of a resolution appropriate to the purpose, shall either approve, ratify, confirm and authorize the continuation of the action taken by the President and reported to the Congress, or shall disapprove, in which case the President shall terminate any commitment and remove any enlargement of the United States armed forces with respect to which such report was submitted.

Madam Chairman, I feel that this amendment, if adopted, will do two things. First, it will provide balance to the warmaking powers. It will assure equality between the President and the Congress. Second, it will give the Congress an opportunity to voice its opinion, to express its views—one way or another—with respect to the question of war or peace.

I therefore hope that this amendment will be adopted at the appropriate time.

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

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

Mr. FRELINGHUYSEN. Madam Chairman, I would like to commend the gentleman from Ohio for his statement, and to ask the gentleman if the gentleman is not fearful that proponents of this measure may not feel that inaction by Congress is a key to what they consider a way of bringing balance?

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

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

Mr. DU PONT. Madam Chairman, will the gentleman yield?

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

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

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

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

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

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

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

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

Mr. FINDLEY. If section 4(c) remains in the bill, as I trust it would, this provides for termination of hostilities by concurrent resolution. Then would not the presumption be that the reference to the resolution in the preceding subparagraph would also have the same meaning?

Mr. WHALEN. I do not think so. The resolution is intentionally flexible. It gives to the appropriate committees the opportunity to handle it either in terms of a concurrent resolution or a joint resolution, whichever they see fit.

Mr. FINDLEY. It seems to me the lack of precision leaves the status of war authority, therefore, too much up in the air.

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

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

Mr. BIESTER. I should like to ask a question concerning the gentleman's proposed amendment. In the event that both Houses took action by a majority, would that bind the President, even though he might disagree with it? In other words, would it be subject to a veto in which both Houses would have to marshal a two-thirds majority, to restrain the President from continuing the action he initiated?

Mr. WHALEN. If it were a concurrent resolution, it would be, in my opinion, that it would bind the President. It would not be subject to a veto. If it were a joint resolution, it would, of course be either accepted or rejected by the President.

Mr. BIESTER. Is it the intent of the gentleman in proposing the amendment that the language 'resolution" means a concurrent resolution? In other words, does the gentleman intend by this amendment to make limitation possible by majority rule of the Congress or by a two-thirds vote?

Mr. WHALEN. I have responded to the gentleman from Illinois that this would be decided at the time the report required by Section 3 was submitted to the Congress. This would be determined by the appropriate committees as to whether it would be a concurrent resolution or a joint resolution.

Mr. BIESTER. I thank the gentleman.

Mr. ZABLOCKI. Madam Chairman, I yield 5 minutes to the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Madam Chairman, we have several choices. One which has been suggested is to do nothing. I find that suggestion very difficult to live with. I think all Members of Congress find it extremely difficult to live with, too. The Congress in recent years has three times by action decided we ought to do something and has previously adopted three resolutions.

This debate is not a new one. It has been raised for a long time. I can remember many campaigns, as other Members can also, in the last 18 years in which the principal issue or a major issue was the fact that the President had exceeded his authority and had involved the American people in warfare. I do not need to itemize those for the Members, whether it was Korea, Vietnam, or some other action.

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

But the Constitution is really quite explicit that the President is Commander in Chief of the Army and Navy.

Madam Chairman, over 160 times, for one reason or another, the manpower of this country has been committed to war. This has occurred because of, in spite of, or without regard to the gray area that exists between the constitutional responsibilities and prerogatives of Congress declaring war and the Executive acting in his own capacity as Commander in Chief.

It has been suggested that we do not need to take the kind of action proposed in this resolution because we have the power of the purse and therefore we could stop the President. I humbly submit to the Members that is impossible.

Unless we bring down the entire Government there is no way by stopping any current appropriation that we can do that, or to go back and pick up past appropriations which the President has the power to spend. If the President claims he is exercising his right under the Constitution and spends the money, we have no choice. We may have a clear-cut, beautiful issue and we would be presented with the question whether we want to impeach our Chief Executive; but we do not stop the war that way and we do not stop expenditures. If the Chief Executive claims or exercises the power as the Commander in Chief without a declaration of war by the Congress to push the button on the atom bomb, the fact that we cut off his money will not stop him from pushing the button. Furthermore the issue would be moot.

Another choice we have is that we can adopt the pending resolution, as controversial as it may be in the minds of some. The constitutional questions are important and should be debated although it seems to me the committee has made it quite clear in its reiteration of the well recognized principle of law that no congressional act can modify the Constitution. What is important is the fact that the Congress speaks on the issue of war and peace by the determination reflected in the pending resolution.

However, let us assume for a moment the pending resolution is unconstitutional because it is a denial or a mitigation or in some way attempts to modify the power of the President under the Constitution—of course we cannot do that. The President has certain powers under the Constitution. If he claims and exercises his right under the Constitution contrary to the intent of this bill, he has to do it in the face of the expressed intent and will of the Congress of the United States. He can do it; he can disregard the will of Congress but he will have to swallow very hard to do it. Some people allege Presidents have been disregarding the expressed will and intent of the people either as expressed by the people themselves or by their Representatives in the Congress, so we would not be faced with a new issue but at least for the first time this resolution would have on the statute books the expressed will of Congress.

I want to get to the third alternative which has been recommended today. It has been suggested that the Congress should act affirmatively, and the way we do that is to amend 4(b) of the pending resolution. The truth of the matter is if we examine that proposition very carefully and amend section 4(b) of this resolution, we would be doing nothing but reiterating the powers which Congress already has. The issue would be more clearly presented by an amendment to repeal section 4(b) or to vote against the bill.

Because the truth of the matter is, if the Congress can act any time it wants to anyway, and we amend section 4(b) to eliminate the 120 day requirement and state that there must be an affirmative vote of the Congress, we are saying that we do not want to vote on the issue now, but wait until sometime in the future, then we will vote. Of course, we have that right anyway.

So, what do we say if we amend 4(b) as suggested? Answer: Nothing.

A vote for this resolution is a vote for specific congressional action now.

The time to act affirmatively is now on this resolution. We are saying in a very limited and careful way that Congress wants to be consulted at the very beginning if it is at all possible; then we would expect the President to terminate under those very limited conditions set forth in the resolution unless the Congress again positively acts again.

So under the pending resolution Congress would be required to act twice.

That is an affirmative action now, not only some affirmative action in the future. This resolution does not tie the right of the Congress to act affirmatively again if it so desires by a very simple priority procedure whereby any single member can offer a resolution that must come to the floor.

It seems to me that we have given Congress two opportunities instead of one to act on the matter. So I say that what is involved here is primarily the principle of the Congress stating right now in this resolution how it feels on future commitments of U.S. forces by the President.

We have been struggling with this issue a long time. This committee has worked very hard over many years. I commend the distinguished gentleman Mr. ZABLOCKI from Wisconsin and the members of his subcommittee who together with the chairman of the full committee the distinguished gentleman from Pennsylvania (Dr. MORGAN) brought this bill to the floor of the House on four occasions.

Madam Chairman, as a cosponsor, I rise in strong support of House Joint Resolution 542, the War Powers Resolution of 1973. Again I reiterate that the chairman of the Subcommittee on National Security Policy and Scientific Developments, Congressman ZABLOCKI, is to be commended for his leadership and perseverence in pursuing this vital legislation.

The need for legislation to clarify the respective responsibilities of the Congress and the President under the Constitution to initiate, to conduct, and to conclude armed hostilities with other nations became clear to me in May of 1970 when U.S. Armed Forces were committed to combat in Cambodia without prior congressional consultation or authorization. In response to the clear need for an affirmative statement of the congressional responsibility in committing U.S. combat forces I had drafted a bill, H.R. 17598, which I introduced on May 13, 1970. I hoped that this proposal would serve as a vehicle for a reappraisal of the war powers issue and a catalyst for a discussion of the vital constitutional issue involved.

Chairman ZABLOCKI concurred with the critical need for a review of the respective congressional and executive powers and held extensive hearings during the summer of 1970. Out of those hearings came the first war powers resolution, House Joint Resolution 1355.

The 1970 resolution reaffirmed the constitutional right of Congress to declare war and stated the sense of Congress that the President should consult with Congress "whenever feasible" before sending U.S. troops into conflict. The proposal also directed the President to report to Congress whenever he committed troops into combat, sent combat-ready troops into foreign territory or enlarged the number of U.S. troops in another nation "without specific prior authorization by Congress."

The House passed the resolution by an overwhelming majority in November of that year, but the Senate failed to act.

In 1971 the chairman reintroduced the War Powers Resolution and I was pleased to join as a cosponsor again. The new resolution, House Joint Resolution 1, deleted the phrase "whenever feasible," and declared it the "sense of Congress that the President should seek appropriate consultations with Congress before involving" U.S. forces in armed conflict. The resolution passed the House again, by voice vote.

Legislation passed by the Senate last year differed markedly from the resolution adopted twice by the House. Efforts in conference to resolve the major differences between the two proposals were unsuccessful, and the issue was left unresolved.

The resolution we are considering today is by far the best proposal submitted to this House for our consideration. It is well balanced and achieves, I believe, the objective we have all sought—namely, to define the relationship within which the Chief Executive and the Congress could separately and collectively exercise their respective constitutional responsibilities and preserve the peace and security of the Nation.

In addition, I believe it represents a significantly less rigid position vis a vis the Senate proposal, and its approval may make possible enactment of effective legislation. It is imperative that this be done.

A key to the pending resolution is the provision for prior and ongoing consultation by the President with the leadership and appropriate committees of the Congress. This is of course essential. There is, in my judgment, no matter of such a sensitive nature that it could not be entrusted to Members of the Congress. And we must have the benefit of full knowledge if we are to exercise our role in the most responsible way.

I have urged throughout our committee's consideration that the strongest possible provision be made requiring consultation. It serves a twofold purpose. Not only do we have the benefit of all the facts, but I believe, we as Members of Congress could make a significant contribution to the Executive's judgment.

The resolution clearly recognizes, as it must, that in some instances military action absent a declaration of war may be taken. In any such instance involving the commitment of U.S. forces to hostilities outside of the United States, commitment of combat-equipped forces to any foreign nation, or the substantial enlargement of combat-equipped U.S. Forces already in a foreign nation, the President is required to submit within 72

hours to both Houses a written report clearly setting forth the circumstances necessitating his action, the authority under which he took that action, and the anticipated scope and cost of the action.

Unlike the legislation passed last year by the Senate and reported again this year by the Foreign Relations Committee, House Joint Resolution 542 does not seek to define those kinds of action which can be taken absent a declaration of war. To do so, in my mind, would further expand the President's authority as Commander in Chief. Under the House proposal, it is up to the President to justify his action and cite the statutory or constitutional authority under which he acted. To specifically define his authority as S. 440 seeks to do, would give the President statutory authority he does not now have. House Joint Resolution 542 avoids this, and in addition specifically states that the proposal does not add to any existing powers of the President.

A significant change in House Joint Resolution 542, not included in proposals considered by the House previously, would terminate within 120 days authority for the continued commitment of U.S. Forces unless the Congress takes specific action to declare war or authorize the continued use of the Armed Forces.

The other body has proposed that emergency authority exercised by the President shall terminate within 30 days unless the Congress acts to authorize its continuation.

I have argued that such a requirement would place the Congress in the position of ratifying, in a pro forma manner, action taken by the President. A call by the President to protect the national security, and "rally round the flag," would build strong sentiment and emotion that I can scarcely imagine that the Congress would not quickly act to authorize action.

On the other hand, I believe that a 120-day period may be a sufficiently lengthy time to allow emotions to subside and to permit a careful study of all facts in proper perspective. The Congress and the country could then be able to make a rational decision on whether the impending action warrants the continued commitment of the U.S. forces.

It is important that there be some boundary of the discretionary authority which the President must have. I think the proposal embodied in House Joint Resolution 542 meets the objections of emotional ratification, and provides that boundary.

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

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

It is such a situation we must guard against. We must never again let our country go to war, piece by piece, as we have done in Southeast Asia.

The responsibility belongs in the Congress to insure against that possibility. The responsibility, under the Constitution, of committing U.S. troops to armed conflict is one shared by the legislative and executive branches of Government. The balance between the two branches has swung heavily to the executive and we must act now to restore it.

I urge your strong support of House Joint Resolution 542.

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

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

I find it very hard to understand, therefore, why it would not be a good idea to not only require the reporting and the consultation as this bill will do, by the President with the Congress but also to mandate action by the Congress itself, as the amendment which will be offered by the gentleman from Ohio (Mr. WHALEN), and a similar amendment offered by me in the committee would do.

Congress has a responsibility under the Constitution, and a responsibility to the American people to take definite, positive action in such a situation. Yes, this our prerogative, and Congress must act in response to the Presidential action; up or down; yea or nay.

This is positive action, and I would submit it is preferable action to the provision of the present bill in section 4(b), which would simply say that if Congress does nothing at all, a major policy decision is made thereby.

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

SEC. 5. (a) Any resolution or bill introduced pursuant to section 4(b) at least forty-five days before the expiration of the one hundred and twenty-day period specified in said section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Senate Foreign Relations Committee, and *one such resolution or bill* shall be reported out by such committee, together with its recommendations, not later than thirty days before the expiration of the one hundred and twenty-day period specified in said section.

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

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

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

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

I would agree that we could cut the money off, as others have suggested, to stop an action. I would say to my friend from Florida that nothing would preclude the President from pushing the button on the 119th day under this measure, if he proposed to push the button for a nuclear holocaust, God forbid.

I would say, however, Madam Chairman, we have the opportunity to make this joint resolution a better joint resolution. We have the opportunity to make it one which will mandate the Congress to act, not to evade action or legislate by inaction.

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

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

Mr. KEMP. I appreciate the gentleman yielding. I agree with the gentleman's statement that it is difficult to rigidly define those areas constitutionally in which the Commander in Chief is going to be allowed to be Commander in Chief.

My question is, would it not perhaps preclude the possibility of successful quiet diplomacy if in fact this is brought to a vote in the Congress within 120 days, on an issue that might very well be resolved, as I say, through quiet diplomacy; that is, the visit by the President to the 6th Fleet at the time of the Soviet-backed Syrian invasion of Jordan a few years ago?

Are not some of the successes of this administration and previous administrations in international affairs better handled at a quiet level, rather than exacerbated by bringing them to a head?

Mr. BUCHANAN. I would say to my friend that I would assume when the President commits American forces to some kind of combat situation that the situation is somewhat exacerbated already, and it would hardly seem an appropriate time for quiet diplomacy.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. MAILLIARD. Madam Chairman, I yield the gentleman 2 additional minutes.

Mr. BUCHANAN. I thank the gentleman for yielding additional time.

Is my friend from New York suggesting that he thinks the present section 4(b) is a better provision than that we would offer?

Mr. KEMP. I have not made up my mind. That is what I stated. I am listening to the debate.

There is a very definite influence of the 6th Fleet or the 7th Fleet. Incidentally, it did not bring about a war in the Mideast. It was one of those areas in which the President made a successful maneuver.

Once a President either activates or visits the 6th Fleet or the 7th Fleet, in the Formosa Straits, he has taken, at least as I understand it, some type of action which might prevent war or bring on war. But it has been successful in many instances.

Mr. BUCHANAN. May I say to my friend that the chances are very great in many instances this could be handled within the 120 days. Congress would have 120 days to act up or down.

I would also say that the President might, by quiet diplomacy, convince the Congress of the rightness of his cause, to give him approval of his action.

That is provided for in the amendment which permits approval as well as disapproval. I would hope that would be the case in such instances. I would further note the language of the Whalen-Buchanan amendment provides for the action it mandates either by declaration of war or the passage of a resolution appropriate for the purpose. Again, this could be a resolution specifically approving a specific and limited action by the President or such broader approval or disapproval the Congress might in its wisdom grant. Congress would be free to act according to its best judgment, but would be required to take definite action on what would surely be an issue of the first priority in an area in which in my judgment the Constitution itself mandates the Congress to assume responsibility and exercise authority.

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

Mr. BUCHANAN. I am glad to yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. But the provisions in section 4(b) and 4(c) do not preclude the Congress from giving similar approval in an expeditious manner, approving the President's commitment of troops or whatever action he has taken.

Mr. BUCHANAN. Yes. I am glad the gentleman mentioned that for the sake of legislative history.

I would say what we seek to do is to mandate action by the Congress. I think this is what the American people want of us, that we act and not fail to act, that we accept our responsibility and not evade it.

Mr. ZABLOCKI. Madam Chairman, I yield 5 minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Madam Chairman, I rise to ask first a few questions.

I would like to know how the bill would have been interpreted in a situation which is not at all a modern day situation and perhaps is one from which we may extract the heat of passion today. I shall pose the question to the gentleman from Wisconsin (Mr. ZABLOCKI) rather in the nature of a hypothetical question than in the nature of an historic fact, because the historic facts may be somewhat in dispute.

Madam Chairman, in 1914 the United States was engaged in certain difficulties with Mexico. Several U.S. sailors were arrested in Tampico. At that time Vittoriano Huerta was the rather dictatorial President of Mexico, and there was a revolution going on in that country. We had originally given him clandestine support but we had gotten tired of him—he was pretty dictatorial—and we were more or less favorable to Carranza.

So on April 14 certain U.S. troops seized the Port of Vera Cruz in order to prevent a German merchantman from bringing arms to Huerta.

Madam Chairman, would that in the gentleman from Wisconsin's opinion, be one of the acts referred to in section 3(1) on page 2, that is "committing the U.S. Armed Forces to hostilities outside the territory of the United States, its possessions and territories"?

Mr. ZABLOCKI. Yes, it would.

Mr. ECKHARDT. Then, had that occurred, the procedures involved in the remainder of section 3, that is, the President's requirement to give 72 hours' notice to the Speaker and other authorities and to give the circumstances and the constitutional and legislative provisions under which the authority existed, would have had to be carried out, I assume. And then congressional action would be provided under section 4.

Madam Chairman, the thing that troubles me is the language under section 8(c) providing that nothing in this act "shall be construed as granting any authority to the President with respect to the commitment of U.S. Armed Forces to hostilities or to the territory, airspace, or waters of a foreign nation."

It would seem to me that the application of section 8 of the act would recognize that President Wilson's act was illegal in the first place.

Now, is the gentleman saying that because of the provisions of section 3, he is acting legally until he is called on to remove the troops, although he would have been acting illegally, as I read the language under section 8(c)?

Mr. ZABLOCKI. Madam Chairman, the reason for section 8(c) is to make clear that the resolution does not add any additional powers to the Executive. I should add that resolution does not detract any power from the President when he acts under the Constitution as Commander in Chief.

In the specific case of President Wilson, to which the gentleman from Texas (Mr. ECKHARDT) refers, President Wilson requested authority to use the Armed Forces 2 days before they were actually landed, and Congress passed a joint resolution giving him such authority the day after they landed.

Mr. ECKHARDT. But do I not recall that Admiral Mayo, commander of the American Fleet, when the sailors were arrested in Tampico, issued an ultimatum to the Mexican Government of Huerta that they give a salute to the American flag or else action would be taken?

There was not any authority for that at the time, was there?

Mr. ZABLOCKI. The President ordered the fleet to move, but, as I understand it, he then came to the Congress to ask permission to act.

Mr. ECKHARDT. Under this act, could the President act first and then report immediately afterward?

The CHAIRMAN. The time of the gentleman has expired.

Mr. ZABLOCKI. I yield to the gentleman 1 additional minute.

Mr. ECKHARDT. Could the President have acted without prior authority so long as within 72 hours he reported it to the Congress in a situation of the type I have described?

Mr. ZABLOCKI. Yes, but the resolution does not add to the President's power. And under 4(b) the President could continue the commitment for 120 days unless Congress took positive action approving or disapproving.

Mr. ECKHARDT. Since my time is very short, I would say if that be true, then I think this act purports to expand the President's constitutional authority and give him authority to act, at least during that 120 days, far beyond the provisions of the Constitution.

The best discussion of the President's authority I think is in Hamilton's Federalist paper 69 wherein he says:

> The President is to be Commander in Chief of the Army and Navy of the United States. In this respect his authority would be nominally the same as that of the king of Great Britain——

The CHAIRMAN. The time of the gentleman has again expired.

Mr. ZABLOCKI. I yield the gentleman 1 additional minute.

Mr. ECKHARDT. He continues:

> But in the substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces as First General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies, all of which by the Constitution under consideration, would appertain to the legislature.

I submit that the action of Wilson in that case, if it were permitted for 120 days, would have utterly destroyed Huerta, because by July he had had to resign, the customhouse at Vera Cruz having been at that time commandeered or at least restricted by American forces in that area.

Mr. BELL. Madam Chairman, I yield 10 minutes to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Madam Chairman, we are debating here this evening probably the most fateful and important matter that either this Congress or any other Congress is likely to debate. The fact that we are forced to do it at 9 o'clock in the evening and to largely empty benches is not merely unfortunate, it is outrageous. This is not only an important question we are debating, but it is an old one which has been with us more or less

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

The gentleman from Wisconsin and the majority of the committee have produced a bill here for which we can thank them whether we agree with them or not, because it raises a topic for debate which ought to be debated and considered in this Congress.

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

One is the matter which we have discussed at considerable length here today, that which has the Congress set vital policy in this vital field, not by doing something, but by failing to do anything. I feel that is a very great weakness in this bill. And of course I would support the amendment to be offered by the gentleman from Ohio (Mr. WHALEN). But, as I will discuss with you in a moment, I have a bill of my own on this subject, which is a complete bill, and which, if the parliamentary situation permits, I shall offer as a substitute, that will likewise care for that same situation, in the same way, and also do certain other things.

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

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

Mr. STRATTON. Madam Chairman, I just want to say to the gentleman that I think his bill is an excellent bill, and I certainly would support it if the gentleman offers it, and if the parliamentary situation does not prevent its acceptance, then I have a similar version which I intend to offer at the proper time.

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

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

The second thing which I feel is a serious drawback to the committee bill is this matter of providing that if we wish to discontinue hostilities which have been instituted, we can do it by a concurrent resolution. I do not want to belabor the point unduly, but I think this is something which, if it means anything, if it is going to restrain the executive, has to have the binding force of law. I submit to the Members that all the authorities say that if we are going to do something which has the force of law, something which is legislative in character, then we have to go through the normal legislative process, which, for better or worse, requires presentiment to the executive. I think there may be an amendment offered on that subject.

Thirdly, the committee bill applies to existing hostilities. And while that is not as important as it would have been while the Vietnamese war was in progress, I still think it is better to look calmly toward future actions rather than try to deal in this legislation with something in which we are already involved. We do not know what we will be involved in when and if the measure is ever adopted. We may be in a war in the Middle East, for instance, by the time this becomes a law, and under this committee bill it applies even though the hostilities started before this bill was passed.

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

Mr. DENNIS. Of course it is for all wars. But the point I am making is that the committee bill says it applies to those which are presently existing. So I suggest it might be wiser to make it apply only to wars which come into being after the statute has been enacted.

Mr. WOLFF. It does not say presently existing wars; this says wars that are in progress at the time of passage.

Mr. DENNIS. Presently in progress at the time of passage, so they have to be presently existing, they started before the passage of the resolution.

Mr. WOLFF. So we should disregard that war, then?

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

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

The fourth problem—and this is a point which I cover in my bill and which is not covered in the committee bill, and which I think is a very important point in my bill—I provide that not only must we vote approval or disapproval within 90 days after the initial commitment of troops, if there has been no declaration of war, or no attack on this country.

But also the President must make periodic reports, if we approve in the first instance, of the progress of affairs, of the progress of hostilities, if any, at intervals not to exceed 6 months; and within 30 days after each one of those subsequent 6-months reports we must again vote approval or disapproval. In no case, under my bill, do we stop the action unless we vote disapproval, but we do have a recurring opportunity to do that, a continuing oversight of the situation; and in each case, both the first time within 90 days and thereafter every 6 months, within 30 days, we are required to vote. We have to act. If and when we disapprove, then the President has to call off the troops.

My bill also does not apply to hostilities which might be existing before it became law, and it does not affect existing treaty obligations, whatever they are, which I do not attempt in the bill to define.

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

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

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

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

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

I think all of this is reason for the general concern about the wisdom of what has been proposed.

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

Mr. FRELINGHUYSEN. I thank the gentleman.

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

Mr. MILFORD. Madam Chairman, I am strongly in favor of a war powers resolution that would once again return to the Congress its constitutional power to declare war or combat actions.

I am strongly against House Joint Resolution 542, in its present form. This resolution is dangerous to this Nation, as it is drafted.

War or combat actions—in any Nation—come about only as a last resort. With modern-day weapons, all-out war of the World War II variety will probably never occur again. I think it is obvious to all that no country could win a nuclear war.

Therefore, I do not believe that this Congress shall ever again be assembled

for the purpose of declaring war in the sense written in our Constitution.

Combat actions are another story. The limited war is a distinct possibility, indeed, a probability. The world is seeing many of these limited action combat engagements. In all probability, there will be many more before the world learns that we can live together without killing each other.

House Joint Resolution 542, in its present form, does not face up to the realities of limited wars. This resolution demands that the President consult with the Congress. I strongly agree with this provision. He should consult with the Congress.

However, House Joint Resolution 542 does not provide for a practical way for the President to communicate with the Congress. This failure negates the value of a war powers act.

Wars are conducted as a result of data accumulated from highly classified intelligence information. Wars are conducted on the basis of supersensitive involvements that have a vital effect on the nations concerned. These are not matters that one can print in the CONGRESSIONAL RECORD.

Therefore, in House Joint Resolution 542 we are saying, "Mr. President, by law you must come over here to Congress and tell us all of our national secrets before you can take actions that might be vital to our survival." This is ridiculous.

On the other hand, as I stated earlier, I think it is vital that the President should consult with the Congress before committing this Nation to a combat action.

House Joint Resolution 542 does not provide a vehicle for responsible congressional communications. The lack of such a vehicle is the prime reason why the President has been unable to report to the Congress on the Vietnam and Cambodian operations.

No individual Member, no committee, nor the leadership structure has the necessary intelligence and information to make a decision to commit or not commit troops into a combat action. That information is available only to the administration.

As presently structured, the administration has no congressional committee or organization with which it can share super-secret information responsibility. Sure, the President can go to the Foreign Relations Committee or Armed Services Committee and give them a briefing. However, under present House rules, individual Members—at their own discretion—can print it in the papers the next day.

Obviously, that is no way to run a war. An army must have only one commander. It cannot have 536, particularly when 535 of them do not have access to the classified data necessary to make reasonable decisions.

Since the olden days of declared wars, the United States has become dependent upon other nations for its survival. Our energy imports are a good example of our dependence upon others. No longer can we say that actions in other lands are none of our business. Seemingly immaterial spats between small nations in other parts of the world, may sometimes have a vital bearing on our survival.

It is very important that this Nation have the ability to respond rapidly and decisively, under these circumstances. As a practical matter, the President could not consult sensibly with the Congress under the present provisions of House Joint Resolution 542.

In order to give the President a practical means of carrying out the desires of all Members of Congress, we have got to establish a responsible vehicle for the President to communicate with in the Congress.

This vehicle could consist of a select committee of responsible Members that are nominated by the Speaker and elected by the House. This select committee must be prohibited, by law under penalty of prison, from revealing the classified information provided by the President. Having been elected by the House, these committee members would represent the sense of the Congress. In this manner the President would have a valuable input that is not now available to him.

I had considered trying to introduce an amendment to House Joint Resolution 542, that would establish such a committee. After consideration, I decided that this would be unwise. Being a new Member, I did not feel that I had the experience to author such an amendment. Furthermore, it should be carefully drawn by committee action, rather than the dubious means of a floor amendment.

Therefore, at the appropriate time, I hope there will be a motion to recommit this bill to committee with the hope that this vital factor will be added. By the addition of a responsible War Powers Committee, both the Congress and the President will be better equipped to make the awesome decision to use or not use American troops in a combat action.

When the motion to recommit is made, I would hope each of you would support it.

Mr. MAILLIARD. Madam Chairman, I have no further requests for time.

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

Mr. WOLFF. Madam Chairman, as I rise today to speak in support of the War Powers Act of 1973, I am aware of the gravity of this bill and its implication for our Nation and, indeed, for the entire world. It is because of the significance of this piece of legislation that I wish to commend the thoughtful and incisive work of Chairman MORGAN and Chairman ZABLOCKI who chairs the subcommittee and the members of the National Security Policy Subcommittee. Theirs was no easy task, for in this bill we see the lessons of history, the immortal concepts imbedded in the American Constitution, and the results of intensive and emotional debates on our national structure of government that have raged over the last several years.

Yet the fact that this proposal has been the subject of deep controversy within and without the organs of government should not urge us to the shelter of further procrastination and inaction; indeed that should be the very cause of our present determination to act responsibly and pass this bill. It is no secret that our branch of government, the Congress of the United States has come under increasing criticism from our people for having abdicated its full role in many substantive areas of Federal policymaking. Nor are we unaware that in many quarters the legislative arm is viewed if not quite with contempt, then certainly with something less than the minimal respect due to the body which forges the policies that guide our Nation's destiny. This sorry state is partially of our own making, for many times we have sought refuge in our own self-doubts, and we have yielded to Executive who have told us that we do not share the wisdom, or the foresight, or the concern for the general well-being of our people that the Executive can assert.

With this viewpoint I cannot disagee more vigorously. But of much greater significance, the very Constitution of this land, which each and every one of us takes a solemn oath to protect and defend, paints a strikingly different picture. It would hardly be necessary for me to read the words of that brilliant instrument to my colleagues to show our role in the operation of our National Government; nor do I desire to lecture on the meaning of separation of powers as it applies to the division of responsibility between the President and the Congress. Rather, I will focus in on the war power, as it is described in the articles on the President, and on the Congress. Article II, section 2, defines the powers of the Executive with respect to the military operations of the United States:

> The President shall be the Commander in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; . . . To the Congress, the Constitution assigned numerous legislative war powers, among them, in article I, section 8, "To declare war."

The very words of the Constitution would seem to present the case quite clearly—the Congress is to declare the wars in which our Nation is to engage, and the President is to be the military commander of our forces in fighting those wars. It might be argued that this approach is too simplistic; that there are too many variations and unpredictable situations that can arise to adhere too closely to this scheme. Indeed it might be argued that the founders could not have meant that there should be no flexibility in this arrangement, for there would be too much danger from our enemies to cast such a rigid die. And to a certain extent this is true. Yet if we look to history—if we look to the words and the writings of those who forged the United States of America from the 13 Colonies, we will see very clearly what the original intent was, and where there was room for reasonable men to differ.

Alexander Hamilton, one of the drafters who most strongly supported the concept of a powerful executive, defended the proposed Constitution in the "Federalist Papers" with great vigor. In his discussions of the war powers, he com-

pared the role of the new American Federal Executive with the then Governor of New York and the powers of the King of England by writing:

The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the union. The King of Great Britain and the Governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article therefore the power of the President would be inferior to that of either the monarch or the governor.

The President is to be Commander in Chief of the Army and Navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the Supreme Command and Direction of the Military and Naval Forces, as First General and Admiral of the Confederacy, while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies—all which, by the constitution under consideration, would appertain to the legislature.

When Hamilton wrote those words, he was at the same time arguing for a strong executive in matters involving the conduct of war—that is, he was well aware that the President must have full authority to direct the military operations of the Nation in conflict. But in distinguishing from the powers of the King, he was clearly saying that role of the Commander in Chief was a military one, not a policy role. This view was seconded by Madison in the same series of writings, who states quite bluntly:

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, the fundamental doctrine of the constitution, that the power to declare war, including the power of judging the cause of war, is fully and exclusively vested in the legislature; that the Executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war.

Again, as though guiding our own deliberations, the founders denied the authority of the Commander in Chief to bring the Nation into a war, but rather looked only to his power to guide the Nation once the Congress had so directed. This historic interpretation is quite different from the situation in which we have found ourselves over the last two or three decades, where proponents of the Presidency seem to be claiming that the power of the Commander in Chief is what he himself defines it to be in any given circumstance. This is simply not the intent or the content of the Constition under which we operate.

In Madison's words again:

Those who are to conduct the war, cannot in the nature of things be proper or safe judges, whether a war ought to be commenced, continued or concluded.

Mr. Gerry of Massachusetts commented in the Constitutional Convention, he "never expected to hear in a republic a motion to empower the Executive alone to declare war." And indeed that motion was wisely defeated by an overwhelming margin.

In no way, of course, does the constitutional scheme inhibit the Executive, as Commander in Chief and as head of the Government, from acting to repel attacks on American soil, to defend American troops from attacks overseas. But what the Constitution does prohibit, is the President acting unilaterally to begin hostilities. This country has separated the military from the civilian function, and indeed has subjugated the military to the civilian authorities, for precisely that reason.

This view was specifically upheld by the Supreme Court of the United States, in the 1850 case of Fleming against Page, which bluntly held that when the President assumed the role of Commander in Chief, "his duty and his power are purely military." The theory that the Commander in Chief has large powers first appeared during the Civil War, but this was justified, as Lincoln repeatedly said, by the emergency of rebellion and invasion. Indeed, it was Congressman Abraham Lincoln who perhaps most clearly delineated the reasons for strictly inhibiting the role of the Executive as Commander in Chief, when he said:

Allow the President to invade a neighboring nation whenever he shall deem it necessary for such a purpose, and you allow him to make war at his pleasure. Study to see if you can fix any limit to his power in this respect, after having given him so much power as you propose . . . kings have always been involving and impoverishing their people in wars, pretending, generally, if not always that the good of the people was the object. This, our constitutional convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the constitution so that no one man should hold the power of bringing oppression upon us. But your view destroys the whole matter, and places our presidents where kings have always stood.

I can find few better words to concisely express the critical need for our action on the War Powers Act of 1973 that is now before us. If Presidents have accumulated unto themselves the powers that are rightfully ours, then we must put a halt to that practice, for preserving and protecting the Constitution is what we are sworn to do.

It is surely not enough to state that Presidents have acted in such and such a manner in the past; indeed that very argument was made and rejected in the steel seizure cases before the Supreme Court 20 years ago. The accretion of power beyond the strict confines of constitutional definition does not change the Constitution and does not alter our form of Government. Mere repetition does not make a mode of procedure proper and acceptable, nor, most emphatically, does it make that procedure part of the Constitution. Ours is not an elective dictatorship. It is a government in which all elected officials have carefully limited powers. As long as the Constitution reads as it does, and as long as we believe that the framers understood the actions they took, then it is our duty to retain the power to declare war, restate it as we must in this resolution, and not allow the Executive, any Executive, to take that power unto himself.

People have argued this concurrent resolution is not binding upon the President—what we are saying here is that the Constitution is binding and the President is bound by the Constitution.

Mr. ZABLOCKI. Madam Chairman, I yield 1 minute to the gentleman from Florida (Mr. BENNETT).

Mr. BENNETT. Madam Chairman, I have some reservations about the resolution as it stands, and I am going to suggest some amendments.

Madam Chairman, the war powers resolution before us seems to me to grant war powers to the President which are those of the Congress under the Constitution; and which should stay there. I would prefer instead to have a more modest proposal.

For instance, section 2 could read:

The President shall consult with the leadership and applicable committees of Congress before substantially enlarging United States Armed Forces in any foreign nation; or before placing any United States Armed Forces in any foreign nation where none had been immediately prior to such placement.

Then all of page 2 could be stricken down to line 19 and that could be amended to read "Sec. 3. The President upon doing any of the things set forth in Sec. 2 shall submit within seventy-two."

Then at page 3 line 1 add after the semicolon the word "and". Then strike lines 2 and 3 of page 3; and at line 4 thereof strike the letter "E" and replace with "D." Strike lines 9 through 25 at page 3.

Strike lines 1 through 12 on page 4.

Strike line 14 on page 4, and substitute the following:

SEC. 4. Any resolution or bill introduced to terminate the utilization of United States armed forces as above described. Strike lines 15, 16, 22 and 23 of page 4. Strike the word "section," line 17, said page. Strike line 21, page 4 and substitute the following mendations, within thirty days.

Strike lines 5, 6, and 7, page 5, and substitute "and shall be reported within fifteen days. The resolution or bill so reported." Strike lines 12 through 25, page 5, and lines 1 through 14, page 6.

Renumber sections 8, 9, and 10 to read sections 5, 6, and 7. At line 8, page 7, strike "3" and substitute "2".

Madam Chairman, as the measure stands before us unamended, it clearly grants to the President power to involve our country in war. Although I presume Congress can legally grant that power, since it can declare war itself, I think there is great wisdom in not granting these war powers to the President. If the bill remains unamended, I therefore intend to vote against, as I have previously done on similar proposals in the past.

Mr. ZABLOCKI. Madam Chairman, I yield such time as he may consume to our Chairman, the gentleman from Pennsylvania (Mr. MORGAN).

Mr. MORGAN. Madam Chairman, I rise in support of House Joint Resolution 542, the War Powers Resolution of 1973.

As you know, I have been chairman of the Committee on Foreign Affairs since 1959.

During that period, few—if any—bills have had more thorough study than the measure which is before us today.

In fact, a major portion of House Joint Resolution 542 already has been debated and approved by the House no less than three times.

In the present Congress—despite past

House approvals—we once again gave the question of war powers very careful consideration.

The subcommittee chaired by the gentleman from Wisconsin, (Mr. ZABLOCKI) once again held extensive hearings on the many war powers bills and resolutions which were referred to the Committee on Foreign Affairs.

There were some 37 proposals. Each one of them was given careful consideration in the formulation of the measure which is before us today.

During 6 days of hearings, the subcommittee heard 16 witnesses, including eight Members of this body.

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

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

Madam Chairman, since I have been in the Congress, the United States has participated in two major conflicts. Each one of those conflicts has raised important constitutional problems concerning war powers.

On June 25, 1950, North Korean troops crossed the borders of South Korea triggering the Korean war.

On June 27, President Truman announced that he had ordered U.S. air and ground forces to give the Korean Government troops cover and support. Following a United Nations resolution calling on members to stop this aggression, President Truman ordered American ground troops to repel the North Korean attack.

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

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

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

Some members, however, were outspoken in their view that power of Congress had been usurped. Among them was the great Republican Senator from Ohio, Senator Robert Taft.

As the war continued into 1951 and 1952, Senator Taft's views gained more and more support.

Some of you may recall that the Korean conflict came to be called "Truman's War." Unfair as that may have been, the phrase reflected that this was a Presidential war since Congress had not declared it or given specific authorization to the hostilities.

In more recent years, the Vietnam war has provided the basis for similar criticisms. The legal authority of the President to deploy American Armed Forces into hostilities in Indochina has been under constant attack.

Many of us have believed that the Gulf of Tonkin resolution—with its broad and strong wording—provided authority to the President to conduct hostilities in Vietnam.

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

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

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

Many observers believe that continuation of those operations requires that the President ask the Congress for specific authorization. Once again there is confusion and the Nation is divided.

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

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

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

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

He noted that the breakdown was most conspicuous—and damaging—with regard to the Vietnam conflict.

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

Congress must not play a junior partner role where decisions involving the commitment of American troops is involved. Neither should we attempt to force such a secondary role upon the President.

Our objective must be to foster a cooperative relationship which will prevent the discord over war powers which has plagued the Nation for a number of years.

House Joint Resolution 542 fulfills that objective. The resolution does not attempt to impose precise and inflexible definitions of the war powers on either the President or the Congress.

The resolution does not attempt to describe specific conditions in which the President may or may not deploy troops—for that, too, would introduce elements of rigidity into our national security system.

Rather, this resolution sets forth a procedure for insuring that whenever a significant number of American forces are deployed into combat for a significant length of time by the President, the Congress must give its assent.

Passage of this resolution and its acceptance by the President would open a new era in the relations between the Congress and the Executive in dealing with the war powers of this Nation.

Therefore, I urge this body to give its approval to House Joint Resolution 542—as reported from the Committee on Foreign Affairs.

Mr. TIERNAN. Madam Chairman, I rise to speak in favor of House Joint Resolution 542 which will place significant restraints on the President's ability to commit U.S. Armed Forces abroad without prior congressional approval.

In the past 20 years we have seen a growing willingness by our Presidents to bypass congressional approval of involvement of American Armed Forces in undeclared conflicts. At the same time, there has been a continuing usurpation of congressional power by the Executive.

Both the 91st and 92d Congresses attempted to deal with these problems by considering war powers legislation. Both times I argued vigorously that the Congress should act to prevent any further erosion of the congressional power to make war. Unfortunately, the House and Senate were never able to agree on a formula to limit the President's power to involve the United States in "undeclared wars."

It is my sincere hope that the House of Representatives will approve House Joint Resolution 542 and that the Senate will follow Senator FULBRIGHT's suggestion to adopt similar language.

If we are to "preserve, protect, and defend the Constitution of the United States," we must act now. Too many times the Congress has shirked its duty and abandoned its authority to declare war through inaction or by underwriting the illegal actions of a President by enacting resolutions which give him a carte blanche in the area of military operations overseas.

Today we must realize our responsibility under the Constitution and our duty to the American people to preserve our democracy by once-and-for-all limiting the President's ability to wage aggressive undeclared wars.

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

The intent of our Founding Fathers is clear. Article I, section 8, of the Constitution specifically gives to the Congress the power to declare war and make rules for the regulation of Armed Forces. The writings of Jefferson, Madison, Monroe and others make it perfectly clear that no warmaking power is given to the President.

Lincoln reiterated this when he said:

Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you allow him to make war at pleasure.

We in Congress do not seek to reclaim our right to declare war because we are any wiser than the President. We do so first and foremost because the future of our democratic form of government, as envisioned by our Founding Fathers and established by the Constitution, is at stake. Second, it is my belief that Congress would use this authority more sparingly than the President, as one man, would. For war is the most crucial issue anyone can deal with, and it should not and cannot be easy to initiate.

Open debate by the Congress may bring up risks otherwise overlooked or alternative courses never considered. It substitutes the experience of many voices for that of one at a time when no objection is too small. And it may well serve to secure the consent of our citizenry, certainly a vital factor as the Vietnam war has so painfully proved. The President reaches his decision to go to war through private processes, inaccessible to the individual citizen, Congress provides that accessibility. Without the moral sanction of the American people, the consequences of war are no less destructive here in our own country than where the bombs are falling. Only by returning to the dictates of the Constitution can we guarantee that we will never again go to war without the support of our citizens.

The war power resolution is the most important consideration on which we will undertake during this Congress. I urge every Member of this body to vote in favor of this measure.

Mr. PODELL. Madam Chairman, the time has come for the Congress of the United States to reassert its position of equality with the executive branch. For too long, have we allowed ourselves to be exploited as a rubberstamp for Presidential supremacy. This legislation, House Joint Resolution 542, which severely limits the circumstances under which the President can commit U.S. troops abroad without congressional approval, can be the first nail in the coffin of congressional complacency.

The Constitution gives the Congress the power to declare war. Clearly, it was the intention of the framers of our government to employ the collective wisdom of both the executive and legislative branches, before committing our Nation to armed conflict. Yet, today we are told that a declaration of war would probably mean nuclear holocaust. We have been forced to swallow an expansive set of national commitments which have escaped the careful consideration of this body. The founders of our Government placed a grave responsibility on the shoulders of Congress and we can not shrink from it and still fulfill our duties of office.

This legislation would not in any way inhibit the ability of the Commander in Chief to respond to a direct threat to the security of our Nation. It would only ensure that the Congress be given the maximum opportunity to advise and consent in all hostilities. Our Nation cannot afford any more errors of judgment in our foreign policy. One small mistake could easily drag us down into the quagmire of overbroad commitments and entangling hostilities.

If there is one lesson that can be learned from the events of the sixties, it is that no one man should be allowed to monopolize our foreign policymaking process. Full public discussion, whenever feasible, is an essential ingredient in the working of a democracy. Certainly, the recent agreements signed by the world's two major nuclear powers amplifies the need, and increases the opportunity, for reasoned debate. The Presidency is often an isolated and lonely office. It is the duty of Congress to make sure the will of the people is heard and adhered to.

Some of the most significant provisions of this legislation are those that deal with the obligation of the executive to keep both the Congress and the American people promptly informed of all commitments abroad. Overclassification and excessive secrecy have plagued our Nation throughout the last decade. Both the legislative and executive branches must learn to cooperate in pooling their research and analysis, since information is the key to any rational foreign policymaking.

How many more billions of dollars must this Nation spend before Congress is willing to assert its authority? How many more lives must be lost? This Nation cannot afford another Vietnam while Congress retreats from its constitutional responsibilities. The time to act is now. I urge all my colleagues to join me in support of this long overdue legislation.

Mr. PARRIS. Madam Chairman, I would like to take this opportunity to comment upon what I consider to be a very serious, and indeed dangerous, fault in the legislation which we have before us. Specifically, I refer to section 4(b) of House Joint Resolution 542, which in actuality denies to the President of the United States the authority to commit U.S. Armed Forces into combat without specific congressional approval.

According to section 4(b) as it is now worded, it is required that pursuant to section 3 of the bill, within 120 days after a report is submitted or required to be submitted, the President shall terminate any commitment and remove any enlargement of U.S. Armed Forces with respect to which such report was submitted, unless the Congress either enacts a declaration of war or a specific authorization for the use of our Armed Forces.

I would like to respectfully submit to my colleagues that the Congress cannot and probably would not "clear its throat" in 120 days unless language is written into this bill which would require some affirmative congressional action in that time period.

Under the Constitution, the power "to make war" is jointly shared by the legislative and executive branches of our Government. For this reason I firmly support legislation which would strengthen and enhance the flow of information to and between both branches, so that both may wisely exercise their constitutional responsibilities in case of impending or present foreign crises. Section 4(b) goes beyond this objective, in strengthening the warmaking powers of the Congress at the expense of those of the Executive.

It is my understanding that a number of amendments to House Joint Resolution 542 will be offered to delete this objectionable provision, substituting language which would require some type of affirmative congressional action within a specific time period after the submission of the President's report on his action in committing U.S. Armed Forces.

Specifically, I would like to direct my colleagues' attention to H.R. 8898, legislation introduced by my friend Mr. REGULA, which I have cosponsored, and which I understand may be offered all or in part as a substitute to House Joint Resolution 542. According to the provisions of this bill, if, in the case of a national emergency, the President should commit U.S. Armed Forces into combat, the President would submit to Congress within 24 hours a report of his actions. Congress would then be required to then take affirmative action, within 90 days after the receipt of the President's report, either approving or disapproving this commitment of U.S. Armed Forces. If the Congress should approve his actions, the President would nevertheless be required to report back to the Congress at 6-month intervals on the progress of the hostilities in question. In the event of congressional disapproval, the Armed Forces would be required to be withdrawn as expeditiously as possible. Lastly, but most important, in the event the Congress failed to take any action to either approve or disapprove the President's action, this would in fact constitute approval of the commitment of U.S. Armed Forces.

I support the provisions of H.R. 8898, and I hope my colleagues will do likewise in the upcoming debate on House Joint Resolution 542.

Mr. BINGHAM. Madam Chairman, House Joint Resolution 542, the "war powers resolution of 1973" of which I am proud to be a cosponsor, is of major importance. It reflects successful efforts by the Foreign Affairs Committee, and especially the subcommittee which originated the legislation, to achieve a compromise bill supported by an overwhelming majority of the committee's members.

I especially want to compliment the chairman of the subcommittee, Mr. ZABLOCKI, for his outstanding leadership in this regard.

House Joint Resolution 542 is superior in a number of respects to its sister bill in the Senate, S. 440, which shares the same laudable purpose—of defining the powers of the President to engage in military hostilities abroad without a congressional declaration of war.

For one thing, S. 440 yields to the temptation to try to define future circumstances in which a President can commit U.S. Armed Forces to hostilities without prior congressional authorization. This raises a double-edged problem. If we give a President broad blanket authority to send troops into battle when-

ever he judges that there is an imminent threat to the United States, or its forces or citizens anywhere, as provided by S. 440, we are giving the White House what could become a blank check. On the other hand, if we try to spell out more restricted circumstances in which a President could take action, how do we know that we may not be unduly tying his hands in some unforeseeable future crisis which genuinely threatens our national security?

In my own proposed war power bill (H.R. 5669) I avoided this unnecessary effort to foresee all situations in which the President might have legitimate need to use troops. I am happy that House Joint Resolution 542 also avoids this possible pitfall.

In this and other respects I feel that House Joint Resolution 542 is reasonable and responsible legislation which would go far toward reasserting the Congress constitutional power in this area. I strongly urge its adoption.

I will reserve further comments on the substance of the resolution until we reach the amendment stage on the bill.

Mr. BURKE of Florida. Madam Chairman, I must rise in opposition to the passage of House Joint Resolution 542, the war powers resolution of 1973, because I honestly feel that it is a mistake to attempt to draw rigid lines between the President and the Congress in the area of warmaking. Furthermore, even if this action was desirable, it should not be done by a joint resolution of Congress, but instead by a constitutional amendment. In my humble opinion and in the opinion of many lawyers, most of the important provisions of House Joint Resolution 542 would probably be declared unconstitutional.

The term "war powers" may be defined as the authority inherent in national sovereignties to declare, conduct, and to conclude armed hostilities with other nations. The U.S. Constitution reserves the following powers expressly to the Congress in article 1, section 8:

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

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than 2 years;

13. To provide and maintain a Navy;

14. To make rules for the government and regulation of the land and naval forces;

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

16. To provide for organizing, arming, and disciplining the militia and for governing such part of them as may be employed in the service of the United States; and

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

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

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

Our Founding Fathers wisely left an element of flexibility in the authorities of Congress and the President, and this has enabled Presidents to employ the power which this flexibility has allowed to encourage peaceful resolvements of potentially dangerous situations.

Although I support the constitutional grant giving authority to the Congress to declare war, nevertheless, at the same time, I support more the President's right to defend our Nation against attack or even possible attack without prior congressional authorization.

We must give the American voter and the American system of elections full credit for selecting in most instances able men to be our Presidents.

Madam Chairman, the President must have the confidence and support of the American people in order for him to be elected to office. His actions as President are similarly subject to public opinion. It is most ironic that House Joint Resolution 542, which is before us today, and was constructed with an eye toward the unfortunate experiences in the mid-1960's, would not have prevented our steadily deepening involvement in Vietnam had it been on the books since 1789. Except perhaps by hindsight, there is no reason to believe that the Congress would not have acted through the mechanism set forth in House Joint Resolution 542, had it been in effect at the time of the Gulf of Tonkin incident, to declare war, if this had been the action requested by President Johnson.

Yet today we are trying to close the barn door after the horse is already out, with this war powers legislation, but what we are likely to do is to splinter the door into fragments so that passage either way through the door is dangerous and the control of the horse is impossible.

Constitutional powers should not be tampered with lightly. Our system of government has worked well for almost 200 years, and I honestly feel that history will reflect that the action being contemplated by the House today, would work to the detriment of our system of government and against the best interests of the American people in the future.

Specifically, section 4 (b) and (c) of House Joint Resolution 542 are in my opinion against the best interests of the United States. Section 4(b) provides that the President at the end of 120 days, without regard even to the immediate safety of our Armed Forces, must terminate any involvement of U.S. Forces in hostilities outside the United States, and withdraw newly dispatched combat forces from the area of any foreign country unless the Congress by that time has enacted a declaration of war or specifically authorized the use of our Armed Forces. Section 4(c) provides that hostilities and deployments may be terminated by Congress alone at any time within the 120-day period, by means of a concurrent resolution having no force of law.

As a practical matter we all know that the Congress does not always move as quickly as it should and a legislative deadlock might develop thereby making it necessary to withdraw troops already committed to combat after 120 days. My colleagues, this is a chaotic way to conduct military actions, or for that matter to conduct a government. It is highly undesirable for Congress through its own inaction to be able to determine whether a course of Presidential action should be continued.

Under present law, if the Commander in Chief orders our forces to deploy or to engage in hostilities, Congress may effect such action if it wishes, by use of constitutionally granted powers. But seeking to provide that a concurrent resolution shall have the force of law, we are embarking on an extremely dangerous and probably unconstitutional course of action.

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

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

In my view, the war powers resolution does two things:

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

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

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

As written, our Federal Constitution is silent in numerous instances with respect to the exercise of congressional, judicial and Presidential powers. Those who drafted the Constitution could not possibly have foreseen the growth of a technological society, or the great complexities of our foreign relations in a nuclear age. During crisis after crisis we have been left floundering in a thicket of controversy over "inherent powers," "assumed authority," and claims of usurpation of the powers of one branch of Government by another.

The constitutional voids and gray areas having to do with the warmaking powers became apparent very early in our national history, and we have had to deal with international situations continuously from 1798 until now without constitutional or statutory guidance.

For example, the hearings of the Foreign Affairs Committee on the war powers resolution list 199 instances where the United States has engaged in mili-

tary action abroad without a declaration of war—from the naval war with France in 1798 to the Jordanian-Syrian crisis of 1970.

Contrasted with these 199 instances of Presidential action—supported by the Congress—the Congress has declared war only 5 times.

Both declared and undeclared wars have resulted in great criticism and distrust of both the Presidency and the Congress. As a result, our democratic processes of government have often become strained and distorted, as they are today.

I believe it is now time to end this distortion and confusion which has plagued us for so long, by defining the roles of Congress and the President with respect to undeclared wars. Our position in the world and our relationships with other governments make such action mandatory.

Early this year, the State Department furnished each of us with a 420-page document listing the treaties and agreements which we have in force with dozens of other countries.

Many of these treaties and agreements, which we in the House had no part in making, call for military action by the United States. Without doubt, if we are to carry out our solemn agreements with other nations, while serving our own best interests, an undeclared war or the commitment of troops abroad will be necessary in the future.

In fact, we would not want to take the grave step of formally declaring war in most cases because of the grave international implications involved in such a step.

The resolution before us is not addressed to any particular war or military action. It does not criticize, nor is it aimed at any President. It does not affect the President's flexibility in dealing with any future international crisis.

These are the things that the resolution will do:

It assures that the Congress—including the House at long last—will be fully consulted and will decide whether to commit the lives of those we represent to a foreign conflict.

Also, the Congress will be provided, at long last, with sufficient information to permit it to intelligently exercise its constitutional duties and prerogatives in these situations.

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

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

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

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

The preservation of representative government in all facets of our national life;

The preservation of the Congress and of this House as the representatives of the will of the people; and

The preservation of the rule of law versus the rule of men.

In conclusion, let me say that I have no desire to inhibit any President or future Congress in the ability to move in our own national interest. If I believed that this resolution would do so, I would not support it.

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

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

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

SHORT TITLE

SECTION 1. This measure may be cited as the "War Powers Resolution of 1973".

Mr. ZABLOCKI. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mrs. GRIFFITHS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (H.J. Res. 542), concerning the war powers of Congress and the President, had come to no resolution thereon.

POULTRY CRISIS

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

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

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

I have communicated my concern to the President. I have told him that the June 1 to 8 base period for price controls is striking the poultry industry with burdens it cannot sustain. In that period, retailers were pushing chickens in their stores as "loss leaders," but they cannot continue those losses, so they are canceling orders to the poultrymen at a time when feed ingredient prices are the highest in history.

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

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

IMPOUNDMENT LEGISLATION REPORTED BY RULES COMMITTEE

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

Mr. MADDEN. Mr. Speaker, on last Thursday, June 21, the Rules Committee reported H.R. 8480, the impoundment control bill to the floor of the House which will be considered by the membership after the Fourth of July recess.

This legislation, if enacted into law, will require the President to notify the Congress whenever he impounds funds, to provide a procedure under which the House of Representatives or the Senate may disapprove the President's action and require him to cease such impounding and to establish for the fiscal year 1974 a ceiling on total Federal expenditures.

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

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

Mr. Speaker, I ask unanimous consent to include with my remarks excerpts from the New York Times of yesterday, Sunday, June 24, 1973, setting out the astounding conditions existing in New York, New Jersey, and Connecticut, caused by cuts of funds in health programs. The facts set out in these articles as reported by health officials in this area are similar to what is taking place all over the Nation, especially in urban centers.

Public Law 93-148
93rd Congress, H. J. Res. 542
November 7, 1973

Joint Resolution

Concerning the war powers of Congress and the President.

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.

50 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; 87 STAT. 555

(2) into the territory, airspace or waters of a foreign nation, 87 STAT. 556 while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

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

TEXTS OF LEGISLATIVE PROHIBITIONS AGAINST REINTRODUCTION OF U.S. MILITARY FORCES INTO INDOCHINA

Second Supplemental Appropriation Act of 1973 (PL 93-50) July 1, 1973

SEC. 307. None of the funds herein appropriated under this Act may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam and South Vietnam or off the shores of Cambodia, Laos, North Vietnam and South Vietnam by United States forces, and after August 15, 1973, no other funds heretofore appropriated under any other Act may be expended for such purpose.

Continuing Resolution for FY 1974 (PL 93-52, as extended by PL 93-118 and 93-124) July 1, 1973

SEC. 108. Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.

State Department Authorization Act for FY 1974 (PL 93-126) (Case-Church Amendment) Oct 18, 1973

SEC. 13. Notwithstanding any other provision of law, on or after August 15, 1973, no funds heretofore or hereafter appropriated may be obligated or expended to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter by the Congress.

93-155 (Nov. 16, 1973)

Military Procurement Authorization Act (PL-[redacted])

§1107 Notwithstanding any other provision of law, upon enactment of this Act, no funds heretofore or hereafter appropriated may be obligated to finance the involvement of United States military forces in hostilities in or over or from off the shores of North Vietnam, South Vietnam, Laos, or Cambodia, unless specifically authorized hereafter, by the Congress.

[redacted] - 93-189

Foreign [redacted] Assistance Act Dec 17, 1973

§29 No funds authorized or appropriated under this or any other law may be expended to finance military or paramilitary operations by the United States in or over Vietnam, Laos, or Cambodia.

Also — §839 of PL 93-437 (DoD Appropriation FY75) "Combat activities"