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War Powers Resolution: A Brief Summary of Pro and Con Arguments

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Summary

The War Powers Resolution, Public Law 93-148, was enacted by Congress over the veto of President Nixon on November 7, 1973. Through more than twenty-two years of experience, the resolution has remained a focus of controversy on the war powers of the President and Congress under the Constitution.¹ Major areas of controversy include the constitutionality of some provisions, the proper roles for the President and Congress in entering armed conflicts, the effect on U.S. military operations, and the effectiveness of the resolution in achieving its purpose of assuring that the collective judgment of the Congress and the President apply to the introduction of U.S. Armed Forces into hostilities. In the post-Cold War era, the relationship of the War Powers Resolution to U.S. participation in military/peacekeeping activities under the auspices of the United Nations, as well as peacekeeping operations in general have become an issue. This report lists major arguments for and against the resolution. This report will not be updated.

PRO

The War Powers Resolution seeks to carry out Article I, Section 8 of the Constitution which grants Congress the power to declare war and to make all laws necessary for carrying into execution the powers vested by the Constitution in the government. The founding fathers gave Congress

CON

The War Powers Resolution is unconstitutional because it impedes the ability of the President to carry out his function as Commander in Chief granted by Article II, Section 2 of the Constitution. The War Powers Resolution attempts to take away authorities that the President has

¹ For additional information, see: The War Powers Resolution: Twenty-Two Years of Experience. May 24, 1996. CRS Report 96-476 F. 58 p.; War Powers Resolution: Presidential Compliance. CRS Issue Brief IB81050; updated periodically. War Powers: Bibliography-in-Brief, 1988-1992. CRS Report 93-675 L.

the power to declare war so that the President alone could not commit the Nation to war.

The War Powers Resolution is necessary to reverse the trend since World War II for Presidents to send armed forces into conflicts abroad without congressional authorization.

The War Powers Resolution permits adequate flexibility by recognizing the President's right to respond to a national emergency created by attack upon the United States, its territories, or its armed forces.

The War Powers Resolution has been effective in encouraging Presidents to consider the opinion of Congress prior to engaging in conflict and in some instances in restraining the size or duration of military commitments. Presidents have reported consistent with the War Powers Resolution on more than sixty occasions.

Collective judgment and the support of Congress and the President are essential to effective conduct of wars, and the War Powers Resolution seeks to assure that both branches share in making the decision from the beginning.

The War Powers Resolution provides a framework of procedures to obtain congressional advice and authorization for military actions abroad in a timely fashion.

exercised for 200 years. Throughout American history Presidents have used U.S. forces abroad, without a declaration of war or other congressional authorization, when necessary to protect American citizens or defend U.S. interests.

The War Powers Resolution impedes the President's flexibility to respond quickly and decisively to world events by providing for congressional consultation and authorization for sustained deployments into hostilities. It encourages foreign adversaries to continue their activities until U.S. mandatory withdrawal deadlines are reached.

The War Powers Resolution has been ineffective because it has not prevented Presidents from undertaking military actions without congressional approval and it has not brought about consultation prior to decisions. Except in the Mayaguez incident, Presidents have never reported under section 4(a)(1) that they have introduced forces into hostilities or imminent hostilities.

The War Powers Resolution hinders effective conduct of military operations abroad. The resolution is not necessary because Congress has ample opportunity through resolutions, authorizing legislation, and appropriations, to shape decisions on the use of armed forces.

The War Powers Resolution diverts congressional debate from the merits of specific courses of action and focuses attention on prerogatives and procedures.

The power of the purse provides

The War Powers Resolution provides a method for Congress to bring about the end of any commitment of forces into hostilities or imminent hostilities.

The War Powers Resolution provides a time limit for using forces without first obtaining congressional authorization, and this time limit provides important leverage for Congress. After the President reports under the War Powers Resolution, or should have reported, that he has introduced forces into hostilities or imminent hostilities, the forces must be withdrawn within 60 to 90 days unless Congress declares war or authorizes the forces to remain.

Section 5(c) of the War Powers Resolution provides that at any time Congress by concurrent resolution can direct the President to withdraw forces from hostilities. This is not a legislative veto because there is no delegation of authority as in other legislative vetoes (rulemaking, suspension of deportation, etc.), where Congress placed a condition on delegated authority. If Members want to act by joint resolution, that procedure already exists in Section 1013 of P.L. 98-164, signed November 22, 1983.

If the War Powers Resolution has been less effective than its supporters originally hoped, it is because Presidents have not complied with all its provisions, or because Congress has not had the will to take the decisions necessary to enforce it. If either the President or Congress would observe the legislation, the resolution could be effective in assuring that both branches supported military action.

Congress opportunity to halt any military action it disapproves so the War Powers Resolution is not necessary.

It is unconstitutional to require that forces be withdrawn within 60 to 90 days because of congressional inaction. The time limit is arbitrary and inflexible and assures adversaries that if they wait out the time limit, U.S. forces will be withdrawn. Some Members object that the time limit has in practice given the President 60 free days in which he can use forces without congressional authorization.

The War Powers Resolution is unconstitutional because Section 5(c) is a legislative veto, providing for action to withdraw forces from hostilities by a concurrent resolution of Congress. A concurrent resolution does not require presentation to the President for signature, and thus such a measure does not go through the full legislative process. In *INS v. Chadha* and related cases, the Supreme Court declared legislative vetoes unconstitutional.

Laws such as the War Powers Resolution are attempts by Congress to micromanage foreign policy and to force consultation and cooperation. Such cooperation cannot be mandated by legal line-drawing but must be based on recognition of shared responsibilities, attitudes of trust, and mutual goals.

The War Powers Resolution is essentially sound and any necessary steps to adapt its functioning to the new post-Cold War world could be taken through minor amendments or without amending the resolution itself. Such measures might include establishing a standing consultative group or specifying congressional procedures in the United Nations Participation Act.

The War Powers Resolution is a vestige of the Vietnam War era and not suited to the new world situation in which U.S. involvement in hostilities may often be part of a multilateral effort. The post-Cold War era requires greater flexibility for the President to make rapid decisions that may entail the use of forces in new and varied ways.

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