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Terrorist Attacks and National Emergencies Act Declarations

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Summary

As part of his response to the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, President George W. Bush formally declared national emergencies on September 14 and 23 pursuant to the National Emergencies Act. The President's actions follow a long-standing tradition of alerting the nation to a crisis threatening public order and constitutional government. Under current arrangements, such declarations also allow the President to make use of activated authority on a selective basis, as appropriate for responding to the emergency at hand. Some 60 provisions of law may be brought into force by an emergency declaration. Updated as events recommend, this report chronicles the actions taken by President Bush pursuant to his national emergency declarations, as well the issuance of additional such declarations concerning terrorism.

Terrorist attacks against the World Trade Center in New York City and the Pentagon in Washington, D.C., on September 11, 2001, prompted President George W. Bush to declare a national emergency on September 14.¹ His action followed a long-standing tradition, dating, in the federal experience, to August 17, 1794, when President George Washington issued a proclamation calling forth the militia to suppress rebellious opposition to the collection of an excise tax on whiskey in locales of western Pennsylvania, Virginia, and the Carolinas.² Washington took personal command of the forces organized to put down the "Whiskey Rebellion."

Until the crisis of World War I, Presidents utilized emergency powers at their own discretion. Proclamations announced the exercise of exigency authority. However, during World War I and thereafter, Chief Executives had available to them a growing body of standby emergency authority that became operative upon the issuance of a

¹ Proclamation 7463, *Federal Register*, vol. 66, Sept. 18, 2001, pp. 48197-48199.

² See James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents*, vol. 1 (New York: Bureau of National Literature, 1897), pp. 149-154; for the underlying statute for the President's proclamation, see 1 Stat. 264-265.

proclamation declaring a condition of national emergency. Sometimes such proclamations confined the matter of crisis to a specific policy sphere, and sometimes they placed no limitation whatsoever on the pronouncement. These activations of standby emergency authority remained acceptable practice until the era of the Vietnam war.

Growing public and congressional displeasure with the President's exercise of his war powers and deepening U.S. involvement in hostilities in Vietnam prompted interest in a variety of related matters. Senator Charles Mathias, together with Senator Frank Church, sought to establish a Senate special committee to study administration reliance on a 1950 proclamation of national emergency to prosecute the Vietnam war. Initially chartered in June 1972 with Mathias and Church as cochairmen, the study panel subsequently produced various studies and assessments.³ Among other discoveries, the committee, after reviewing the United States Code and uncodified emergency powers statutes, identified 470 provisions of federal law that delegated extraordinary authority to the executive in time of national emergency. It also found that there was no process for automatically terminating outstanding national emergency proclamations. Thus, the panel began developing legislation containing a formula for regulating emergency declarations in the future and otherwise adjusting the body of statutorily delegated emergency powers by abolishing some provisions, relegating others to permanent status, and continuing others in a standby capacity. Its final report, offering findings and recommendations, was issued in May 1976.⁴

The National Emergencies Act

As early as July 1974, the special committee had unanimously recommended legislation establishing a procedure for presidential declaration and congressional regulation of a national emergency. Introduced in the Senate the following month, the measure, after negotiation with the executive branch and further refinement, was cleared for President Gerald Ford's signature on September 14, 1976.⁵

³ See U.S. Congress, Senate Special Committee on National Emergencies and Delegated Emergency Powers, *A Brief History of Emergency Powers in the United States*, committee print, 93rd Cong., 2nd sess. (Washington: GPO, 1974); U.S. Congress, Senate Special Committee on National Emergencies and Delegated Emergency Powers, *A Recommended National Emergencies Act*, 93rd Cong., 2nd sess., S.Rept. 93-1170 (Washington: GPO, 1974); U.S. Congress, Senate Special Committee on National Emergencies and Delegated Emergency Powers, *Executive Orders in Times of War and National Emergency*, committee print, 93rd Cong., 2nd sess. (Washington: GPO, 1974); U.S. Congress, Senate Special Committee on the Termination of the National Emergency, *Emergency Powers Statutes*, 93rd Cong., 1st sess., S.Rept. 93-549 (Washington: GPO, 1973); U.S. Congress, Senate Special Committee on the Termination of the National Emergency, *National Emergency*, 3 parts, hearings, 93rd Cong., 1st sess., Apr. 11-12, July 24, and Nov. 28, 1973 (Washington: GPO, 1973).

⁴ See U.S. Congress, Senate Special Committee on National Emergencies and Delegated Emergency Powers, *National Emergencies and Delegated Emergency Powers*, 94th Cong., 2nd sess., S.Rept. 94-922 (Washington: GPO, 1976).

⁵ 90 Stat. 1255; 50 U.S.C. 1601-1651 (1988); see U.S. Congress, Senate Committee on Government Operations and Special Committee on National Emergencies and Delegated Emergency Powers, *The National Emergencies Act (Public Law 94-412)*. *Source Book: Legislative History, Texts, and Other Documents*, committee print, 94th Cong., 2nd sess.

As enacted, the National Emergencies Act consisted of five titles. The first of these generally returned all standby statutory delegations of emergency power, activated by an outstanding declaration of national emergency, to a dormant state two years after the statute's approval. However, the act did not cancel outstanding 1933, 1950, 1970, and 1971 national emergency proclamations, because these were issued by the President pursuant to his Article II constitutional authority. Nevertheless, it did render them ineffective by returning to dormancy the statutory authorities they had activated, thereby necessitating a new declaration to activate standby statutory emergency authorities.

Title II provided a procedure for future declarations of national emergency by the President and prescribed arrangements for their congressional regulation. The statute established an exclusive means for declaring a national emergency. Furthermore, emergency declarations were to terminate automatically after one year unless formally continued for another year by the President, but could be terminated earlier by either the President or Congress. Originally, the prescribed method for congressional termination of a declared national emergency was a concurrent resolution adopted by both houses of Congress. This type of so-called "legislative veto" was effectively invalidated by the Supreme Court in 1983.⁶ The National Emergencies Act was amended in 1985 to substitute a joint resolution as the vehicle for rescinding a national emergency declaration.⁷

When declaring a national emergency, the President must indicate, according to Title III, the powers and authorities being activated to respond to the exigency at hand. A recent CRS compilation identifies almost 160 provisions of law that may be activated by an emergency proclamation.⁸ They include authority to prosecute and punish anyone who willfully makes or conspires to make defective war material (18 U.S.C. 2154), to waive the written application requirement for radio station licenses and renewals (47 U.S.C. 308), to release national defense stockpile materials (50 U.S.C. 98f(a)(2)), to control vessels in territorial waters (50 U.S.C. 191), and to regulate or prohibit any transactions in foreign exchange, bank transfers of credit or payments involving any interest of any foreign country or a national thereof, or transactions involving any property in which any foreign country or a national thereof has any interest (50 U.S.C. 1702).

Certain presidential accountability and reporting requirements regarding national emergency declarations were specified in Title IV, and the repeal and continuation of various statutory provisions delegating emergency powers was accomplished in Title V.

Initial use of the act occurred in November 1979 in response to the U.S. embassy being seized and its personnel being taken hostage in Tehran, Iran. The proclaimed national emergency activated authority for the seizure of Iranian government property,

⁵ (...continued)
(Washington: GPO, 1976).

⁶ See *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

⁷ See 99 Stat. 405, 448.

⁸ See CRS Report RL31133, *Declarations of War and Authorizations for the Use of Military Force: Background and Legal Implications*, by David M. Ackerman and Richard F. Grimmett, pp. 36-55.

including assets, and prohibition of economic transactions with Iran. Such national emergency actions were also subsequently taken against Nicaragua, South Africa, Libya, Panama, Iraq, Haiti, Serbia, Montenegro, Bosnia, Herzegovina, Burma, and Sudan. On several occasions since 1983, when the Export Administration Act of 1979 automatically expired and awaited reauthorization, national emergencies were declared to activate authority by which to continue the operative status of the statute's export control regulations. To date, over 30 national emergencies have been declared pursuant to the National Emergencies Act, and about a dozen of these have been subsequently terminated.⁹

Responding to Terrorist Attacks

Prior to the September 14, 2001, national emergency declaration of President George W. Bush in response to terrorist attacks in New York City and Washington, D.C., President William Clinton had declared a January 1995 national emergency relative to prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process. Such transactions included assisting in, sponsoring, or providing financial, material, or technological support for, or services in support of, acts of violence by terrorists.

In his national emergency declaration, President Bush did not activate, as one newspaper erroneously reported, "some 500 dormant legal provisions, including those allowing him to impose censorship and martial law."¹⁰ Instead, his declaration, in accordance with the requirements of the National Emergencies Act, selectively activated the following statutory authorities, which were specified in the President's national emergency proclamation.

10 U.S.C. 123. Authorizes the President, in time or war or national emergency declared by Congress or the President, to suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve.

10 U.S.C. 123a. Authorizes the President, at the end of any fiscal year when there is in effect a war or national emergency, to defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

10 U.S.C. 527. Authorizes the President, in time or war or national emergency declared by Congress or the President, to suspend the operation of three specified sections of Title 10, United States Code, concerning the authorized strength of commissioned officers on active duty in senior grades, the distribution of commissioned officers on active duty in general officer or flag officer grades, and the authorized strength of commissioned officers on active duty in general officer or flag officer grades.

⁹ See CRS Report 98-505, *National Emergency Powers*, by Harold C. Relyea.

¹⁰ Frank J. Murray, "Wartime Presidential Powers Supersede Liberties," *Washington Times*, Sept. 18, 2001, pp. A1, A12.

10 U.S.C. 2201(c). Authorizes the President to make a determination that it is necessary to increase the number of members of the armed services on active duty beyond the number for which funds have been appropriated for the Department of Defense.

10 U.S.C. 12006. Authorizes the President, in time of war or national emergency declared by Congress or the President, to suspend the operation of three specified sections of Title 10, United States Code, concerning the authorized strengths of armed forces reserve commissioned officers in an active status, reserve general and flag officers in an active status, and filling senior Army and Air Force Reserve commissioned officer vacancies.

10 U.S.C. 12302. Authorizes the President, in time of national emergency declared by the President, to call members of the Ready Reserve to active duty.

14 U.S.C. 331. Authorizes the Secretary of Transportation, in time of war or national emergency, to order any regular officer of the Coast Guard on the retired list to active duty.

14 U.S.C. 359. Authorizes the Commandant of the Coast Guard, in time of war or national emergency, to order any enlisted member of the Coast Guard on the retired list to active duty.

14 U.S.C. 367. Authorizes the Secretary of Transportation to detain enlisted members of the Coast Guard beyond their terms of enlistment.

President Bush directed and delegated the exercise of this authority with E.O. 13223 of September 14, 2001.¹¹

On September 23, 2001, President Bush again declared a national emergency, invoked the International Emergency Economic Powers Act (IEEPA),¹² and ordered its implementation to block property and prohibit transactions with persons who commit, threaten to commit, or support terrorism.¹³ The IEEPA authorizes the President to regulate or prohibit any transactions in foreign exchange, bank transfers of credit or payments involving any interest of any foreign country or a national thereof, or transactions involving any property in which any foreign country or a national thereof has any interest. Earlier, President Clinton had declared a national emergency and invoked the IEEPA to prohibit transactions with terrorists who threatened to disrupt the Middle East peace process.¹⁴

On November 16, 2001, President Bush, pursuant to his September 14 declaration of a national emergency, issued E.O. 13235 invoking the emergency construction authority and making it available for implementation by the Secretary of Defense and, at

¹¹ E.O. 13223, *Federal Register*, vol. 66, Sept. 18, 2001, pp. 48201-48202.

¹² 50 U.S.C. 1701-1706.

¹³ E.O. 13224, *Federal Register*, vol. 66, Sept. 25, 2001, pp. 49079-49082.

¹⁴ E.O. 12947, 3 C.F.R., 1995 Comp., pp. 319-320.

the Secretary's discretion, to the secretaries of the military departments.¹⁵ This authority, found at 10 U.S.C. 2808, authorizes the Secretary of Defense, in time of declared war or national emergency declared by the President, and without regard to any other provision of law, to undertake military construction projects and to authorize the secretaries of the military departments to undertake such construction projects, not otherwise authorized by law, as are necessary to support use of the armed forces. Such construction projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

With E.O. 13253 of January 16, 2002, President Bush amended E.O. 13223, which ordered the Ready Reserve to active duty. The amendments extended certain authorities to the Secretary of Transportation relative to Coast Guard personnel.¹⁶

Intervention in Iraq

Growing out of U.S. intervention in Iraq, which has been justified, in part, by the Bush Administration as an action against al Qaeda located there and a regime tied to and harboring such terrorists, President Bush issued E.O. 13303 of May 22, 2003, declaring a national emergency for purposes of protecting the development fund for Iraq and certain other property in which Iraq has an interest.¹⁷ A primary authority activated in this regard is the International Emergency Economic Powers Act. This emergency declaration was designed to protect property and interests in property apart from protections emanating from an earlier emergency declaration made with E.O. 12722 of August 2, 1990.

On December 17, 2003, President Bush, pursuant to his national emergency declaration of September 14, 2001, issued E.O. 13321 invoking 10 U.S.C. 603, which authorizes the President to appoint qualified persons to any officer grade in the armed forces.¹⁸ This authority was made available to the Secretary of Defense in accordance with the terms of the statutory provision and E.O. 12396 concerning defense officer personnel management.¹⁹

Further actions by the President pursuant to his September 14 and 23 national emergency declarations, and the issuance of additional such declarations concerning terrorism, will be chronicled in this report as they occur.

¹⁵ E.O. 13235, *Federal Register*, vol. 66, Nov. 20, 2001, p. 58343.

¹⁶ E.O. 13253, *Federal Register*, vol. 67, Jan. 18, 2002, p. 2791.

¹⁷ E.O. 13303, *Federal Register*, vol. 68, May 28, 2003, pp. 31931-31932.

¹⁸ E.O. 13321, *Federal Register*, vol. 68, Dec. 23, 2003, p. 74465.

¹⁹ E.O. 12396, 3 C.F.R., 1982 Comp., pp. 234-235.