



December 17, 2025

Understanding the War Powers Resolution

Under the Constitution, authority concerning the use of the military is divided between Congress and the President. In the wake of the Vietnam War, concern increased in Congress about presidential use of U.S. Armed Forces without congressional authorization. On November 7, 1973, Congress enacted the War Powers Resolution (WPR; P.L. 93-148; 50 U.S.C. Ch. 33) over the veto of President Nixon, creating a structure for Congress to respond to the introduction of U.S. Armed Forces into situations that involve or might lead to hostilities.

For historic information on the WPR, its application, and related policy issues, see CRS Report R42699, *The War Powers Resolution: Concepts and Practice*, by Matthew C. Weed.

Structure of the War Powers Resolution

The WPR's provisions, detailed below, operate to provide Congress with the information and roadmap to make decisions alongside the President about the use of the military. Under the WPR, the President is required to inform and consult with Congress about possible and current uses of U.S. Armed Forces, and Congress may or may not act in expedited fashion to authorize or limit presidential use of the military.

Title (Section 1)

Although the legislation is sometimes referred to as the "War Powers Act," Section 1 establishes the title of the legislation as the War Powers Resolution. Adding to the possible confusion, measures introduced pursuant to the expedited consideration procedures in Sections 6 and 7 (see below) are often termed "war powers resolutions," but these measures are separate from the War Powers Resolution itself. As explained below, the War Powers Resolution creates a structure and process under which individual war powers measures are considered.

Purpose, Policy, and Role of Congress (Section 2)

Section 2(a) states that the WPR's purpose is to "insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities." Section 2(b) explains that Congress's authority to legislate on war powers emanates from the Necessary and Proper Clause of the Constitution, which grants Congress "the power to make all laws necessary and proper for carrying into execution" the powers of the federal government, including those of the executive branch. Section 2(c) states that the powers of the President as Commander in Chief to introduce U.S. Armed Forces into hostilities are limited, "exercised only pursuant to" a declaration of war or other specific statutory authorization from Congress, or a "national emergency created by attack on" the United States or its Armed Forces.

Consultation with Congress (Section 3)

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

Notification to Congress (Section 4)

Section 4 is the WPR's central provision, designed to ensure that Congress is notified of military deployments that could involve the exercise of congressional war powers. Section 4(a)(1) requires the President, in the absence of a declaration of war, to notify the Speaker and President Pro Tempore within 48 hours after U.S. Armed Forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." While "hostilities" is not defined in the WPR, the House report accompanying the original measure stated that the term includes not only "a situation in which fighting actually has begun," but also "a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict." The report indicated that "imminent hostilities" includes "a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict."

Section 4(a)(2) and (3) require the President to report other deployments of U.S. Armed Forces "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 additional deployments "in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation."

All Section 4(a) notifications must include information on (1) "the circumstances necessitating the introduction of United States Armed Forces"; (2) "the constitutional and legislative authority under which such introduction took place"; and (3) "the estimated scope and duration of the hostilities or involvement."

Section 4(c) requires the President to report to Congress periodically, and at least every six months, on continuing deployments of U.S. forces reported under Section 4(a).

Congressional Response to an Introduction of U.S. Armed Forces (Section 5)

Section 5 sets out possible congressional responses to authorize or terminate an unauthorized presidential use of the military. Pursuant to Section 5(a), a Section 4 report of hostilities shall be transferred to both the House Foreign

Affairs and Senate Foreign Relations Committees for consideration. Section 5(b) states that when the President reports an introduction of U.S. Armed Forces into active or imminent hostilities, or such report is required under Section 4(a)(1) but not made, the President must terminate such use of U.S. Armed Forces after 60 days unless Congress (1) has declared war or specifically authorized the action, (2) has extended the 60-day period by law, or (3) is physically unable to meet as a result of an armed attack on the United States. The period of deployment can be extended an additional 30 days by the President if the President certifies that “unavoidable military necessity respecting the safety of United States Armed Forces” requires their continued use in the course of bringing about their removal.

Section 5(b) is sometimes interpreted to allow the President to unilaterally involve U.S. Armed Forces in hostilities for any reason for at least 60 days. This interpretation might seem at odds with the assertions of limited presidential war power in Section 2(c), as well as Section 8(d)(2), which states that the WPR does not confer any presidential authority to involve U.S. Armed Forces in hostilities. Under Section 6 (see below), the 60-day period seems to serve primarily as a window for Congress to possibly authorize an otherwise unauthorized use of the military.

Under Section 5(c), Congress may require the President to remove U.S. Armed Forces from such unauthorized hostilities at any time by concurrent resolution.

Termination Measures Outside WPR Procedure

After a Supreme Court decision that called into question whether Section 5(c) of the WPR constituted an unconstitutional legislative veto, Congress enacted Section 1013 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (P.L. 98-164; 50 U.S.C. 1546a), to provide expedited consideration of a joint resolution or bill, rather than a concurrent resolution, requiring removal of U.S. Armed Forces from unauthorized hostilities. This provision utilizes a 1976 provision for privileged procedure in the Senate, but not the House. Alongside Section 5(c) concurrent resolutions, both the Senate and the House have increasingly considered joint resolutions under this procedure.

Priority Procedure to Cure Unauthorized Hostilities (Section 6)

Section 6 establishes expedited procedures for congressional consideration of a joint resolution or bill introduced to authorize an otherwise unauthorized use of Armed Forces under Section 5(b). A joint resolution or bill to authorize is privileged if introduced no later than 30 days before the end of the 60-day period. Such a measure shall be referred to the House Foreign Affairs or Senate Foreign Relations Committee. No later than 24 days before the end of the period, the committee considering the measure shall report the measure to its respective chamber, and that chamber shall vote on the measure within three calendar days. If adopted, the measure shall be referred to the other chamber’s committee and reported by that committee to its respective chamber no later than 14 days before the end of the period, and that chamber shall likewise vote on the

measure within three calendar days. If the measure is adopted with differences, a committee of conference shall be appointed and file its report no later than four days before the end of the period. If the conferees cannot agree within 48 hours, they shall report to their respective chambers, and both chambers shall “act on” such report before the end of the period.

Priority Procedure to Terminate Unauthorized Hostilities (Section 7)

Section 7 establishes expedited procedures for consideration of a concurrent resolution requiring removal of U.S. Armed Forces from unauthorized hostilities under Section 5(c). Such a measure shall be referred to the House Foreign Affairs or Senate Foreign Relations Committee, and the relevant committee shall report the measure to its respective chamber within 15 calendar days. That chamber shall vote on the measure within three calendar days after receipt from the committee. If adopted, the measure shall be referred to the other chamber’s committee and reported by that committee to its respective chamber within 15 calendar days, with that chamber likewise voting on the measure within three calendar days thereafter. If the measure is adopted with differences, a committee of conference shall be appointed and file its report no later than six days after referral to it. If the conferees cannot agree within 48 hours, they shall report such disagreement to their respective chambers.

Interpretive Provisions (Section 8)

Section 8 contains interpretive provisions. Section 8(a) states that the authority for hostilities is not to be inferred from any law or treaty, unless such law or treaty-implementing legislation specifically authorizes hostilities and states that it is “intended to constitute specific statutory authorization within the meaning of this joint resolution.”

Section 8(b) allows U.S. personnel to participate in the “headquarters operations” of multilateral “high-level military commands,” such as the North Atlantic Treaty Organization (NATO) and the North American Air Defense Command (NORAD), without specific authorization.

Section 8(c) defines “introduction of United States Armed Forces” to include the assignment of U.S. forces to “command, coordinate, participate in the movement of, or accompany” regular or irregular military forces of other countries when engaged, or potentially engaged, in hostilities.

Section 8(d) states that nothing in the WPR is intended to alter the constitutional authority of either the Congress or the President. It also specifies that nothing is to be construed as granting any authority to introduce troops that would not exist in the absence of the WPR.

Separability Clause (Section 9)

Section 9 is a separability clause, stating that if any provision or its application is found invalid, the remainder of the WPR is not to be affected.

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