Order Code IB81050

War Powers Resolution: Presidential Compliance

Updated November 15, 2004

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CONTENTS

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SUMMARY

Two separate but closely related issues confront Congress each time the President introduces armed forces into a situation abroad that conceivably could lead to their involvement in hostilities. One issue concerns the division of war powers between the President and Congress, whether the use of armed forces falls within the purview of the congressional power to declare war and the War Powers Resolution. The other issue is whether Congress concurs in the wisdom of the action. This issue brief does not deal with the substantive merits of using armed forces in specific cases, but rather with the congressional authorization for the action and the application and effectiveness of the War Powers Resolution. The purpose of the War Powers Resolution (P.L. 93-148, passed over President Nixon's veto on November 7, 1973) is to ensure that Congress and the President share in making decisions that may get the U.S. involved in hostilities. Compliance becomes an issue whenever the President introduces U.S. forces abroad in situations that might be construed as hostilities or imminent hostilities. Criteria for compliance include prior consultation with Congress, fulfillment of the reporting requirements, and congressional authorization. If the President has not complied fully, the issue becomes what action Congress should take to bring about compliance or to influence U.S. policy. A new issue has become congressional authorization of U.N. peacekeeping or other U.N.-sponsored actions. For nearly 31 years, war powers and the War Powers Resolution have been an issue in U.S. military actions in Asia, the Middle East, Africa, Central America, and Europe. Presidents have submitted 115 reports to Congress as a result of the War Powers Resolution, although only one (the Mayaguez situation) cited Section 4(a)(1) or specifically stated that forces had been introduced into hostilities or imminent hostilities. Congress invoked the War Powers Resolution in the Multinational Force in Lebanon Resolution (P.L. 98-119), which authorized the Marines to remain in Lebanon for 18 months. In addition, P.L. 102-1, authorizing the use of U.S. armed forces concerning the Iraqi aggression against Kuwait, stated that it constituted specific statutory authorization within the meaning of the War Powers Resolution. On November 9, 1993, the House used a section of the War Powers Resolution to state that U.S. forces should be withdrawn from Somalia by March 31, 1994; Congress had already taken this action in appropriations legislation. More recently, war powers have been at issue in former Yugoslavia/Bosnia/Kosovo, Iraq, Haiti, and in responding to terrorist attacks against the U.S. after September 11, 2001. After combat operations against Iraqi forces ended on February 28, 1991, the use of force to obtain Iraqi compliance with U.N. resolutions remained a War Powers issue, until the enactment of P.L. 107-243, in October 2002, which explicitly authorized the President to use force against Iraq, an authority he exercised in March 2003, and continues to exercise for military operations in Iraq.

A longer-term issue is whether the War Powers Resolution is an appropriate and effective means of assuring congressional participation in actions that might get the United States involved in war. Some observers contend that the War Powers Resolution has not significantly increased congressional participation, while others emphasize that it has promoted consultation and served as leverage. Proposals have been made to strengthen, change, or repeal the resolution. None have been enacted to date.

MOST RECENT DEVELOPMENTS

On March 20, 2004, the President reported to Congress "consistent with the War Powers Resolution," a consolidated report giving details of multiple on-going United States military deployments and operations "in support of the global war on terrorism (including in Afghanistan)," as well as operations in Bosnia and Herzegovina, Kosovo, and Haiti. In this report, the President noted that U.S. anti-terror related activities were underway in Georgia, Djibouti, Kenya, Ethiopia, Yemen, and Eritrea. He further noted that U.S. combat-equipped military personnel continued to be deployed in Kosovo as part of the NATO-led KFOR (1,900 personnel); in Bosnia and Herzegovina as part of the NATO-led SFOR (about 1,100 personnel); and approximately 1,800 military personnel were deployed in Haiti as part of the U.N. Multinational Interim Force.

On March 2, 2004, the President reported to Congress "consistent with the War Powers Resolution" that, on February 29, he had sent about "200 additional U.S. combat-equipped, military personnel from the U.S. Joint Forces Command" to Port-au-Prince, Haiti for a variety of purposes, including preparing the way for a UN Multinational Interim Force, and otherwise supporting UN Security Council Resolution 1529 (2004).

BACKGROUND AND ANALYSIS

Under the Constitution, war powers are divided. Congress has the power to declare war and raise and support the armed forces (Article I, Section 8), while the President is Commander in Chief (Article II, Section 2). It is generally agreed that the Commander in Chief role gives the President power to repel attacks against the United States and makes him responsible for leading the armed forces. During the Korean and Vietnam wars, the United States found itself involved for many years in undeclared wars. Many Members of Congress became concerned with the erosion of congressional authority to decide when the United States should become involved in a war or the use of armed forces that might lead to war. On November 7, 1973, Congress passed the War Powers Resolution (P.L. 93-148) over the veto of President Nixon.

The War Powers Resolution states that the President's powers as Commander- in-Chief to introduce U.S. forces into hostilities or imminent hostilities are exercised only pursuant to (1) a declaration of war; (2) specific statutory authorization; or (3) a national emergency created by an attack on the United States or its forces. It requires the President in every possible instance to consult with Congress before introducing American armed forces into hostilities or imminent hostilities unless there has been a declaration of war or other specific congressional authorization. It also requires the President to report to Congress any introduction of forces into hostilities or imminent hostilities, Section 4(a)(1); into foreign territory while equipped for combat, Section 4(a)(2); or in numbers which substantially enlarge U.S. forces equipped for combat already in a foreign nation, Section 4(a)(3). Once a report is submitted "or required to be submitted" under Section 4(a)(1), Congress must authorize the use of forces within 60 to 90 days or the forces must be withdrawn. (For detailed background, see CRS Report RL32267, *The War Powers Resolution: After Thirty Years*, and CRS Report RL31133, *Declarations of War and Authorizations for the Use of*

Military Force: Background and Legal Implications). It is important to note that since the War Powers Resolution's enactment, over President Nixon's veto in 1973, every President has taken the position that it is an unconstitutional infringement by the Congress on the President's authority as Commander-in-Chief. The courts have not directly addressed this question.

United Nations Actions

U.N. Security Council resolutions provide authority for U.S. action under international law. Whether congressional authorization is required under domestic law depends on the types of U.N. action and is governed by the Constitution, the U.N. Participation Act (P.L. 79-264, as amended), as well as by the War Powers Resolution. Section 8(b) of the War Powers Resolution exempts only participation in headquarters operations of joint military commands established prior to 1973.

For armed actions under Articles 42 and 43 of the U.N. Charter, Section 6 of the U.N. Participation Act authorizes the President to negotiate special agreements with the Security Council, subject to the approval of Congress, providing for the numbers and types of armed forces and facilities to be made available to the Security Council. Once the agreements have been concluded, further congressional authorization is not necessary, but no such agreements have been concluded. Some Members have sought to encourage negotiation of military agreements under Article 43 of the U.N. Charter. Questions include whether congressional approval is required only for an initial agreement on providing peacekeeping forces in general, or for each agreement to provide forces in specific situations, and how such approvals would relate to the War Powers Resolution.

Section 7 of the U.N. Participation Act authorizes the detail of up to 1,000 personnel to serve in any noncombatant capacity for certain U.N. peaceful settlement activities. The United States has provided personnel to several U.N. peacekeeping missions, such as observers to the U.N. Truce Supervision Organization in Palestine. In these instances, controversy over the need for congressional authorization has not occurred because the action appeared to fall within the authorization in Section 7 of the Participation Act. Controversy has arisen when forces have been deployed in larger numbers or as possible combatants.

In the 103rd Congress, Members used several vehicles in seeking some control over future peacekeeping actions wherever they might occur. Both the Defense Appropriations Act for FY1994, P.L. 103-139 (Section 8153), and for FY1995, P.L. 103- 335 (Section 8103), stated the sense of Congress that funds should not be used for U.N. peacekeeping or peace enforcement operations unless the President consulted with Congress at least 15 days in advance whenever possible. Section 1502 of the Defense Authorization for FY1994, P.L. 103-60, required the President to submit by April 1, 1994, a report on multinational peacekeeping including the requirement of congressional approval for participation and the applicability of the War Powers Resolution and the U.N. Participation Act.

Along similar lines, the conference report on the Department of State Appropriations Act for FY1994, H.R. 2519 (P.L. 103-121, signed October 27, 1993), called for the Secretary of State to notify both Appropriations Committees 15 days in advance, where practicable, of a vote by the U.N. Security Council to establish any new or expanded peacekeeping

mission. The Foreign Relations Authorization Act, P.L. 103-236, signed April 30, 1994, established new requirements for consultation with Congress on U.S. Participation in U.N. Peacekeeping Operations. Section 407 required monthly consultations on the status of peacekeeping operations and advance reports on resolutions that would authorize a new U.N. peacekeeping operation. It also required 15 days' advance notice of any U.S. assistance to support U.N. peacekeeping operations and a quarterly report on all assistance that had been provided to the U.N. for peacekeeping operations. To permit presidential flexibility, conferees explained, the quarterly report need not include temporary duty assignments of U.S. personnel in support of peacekeeping operations of less than twenty personnel in any one case.

The following discussion provides background on major cases of U.S. military involvement in overseas operations in recent years that have raised War Powers questions.

Former Yugoslavia/Bosnia

The issue of war powers and whether congressional authorization is necessary for U.S. participation in U.N. action (see above discussion) was also raised by efforts to halt fighting in the former territory of Yugoslavia, particularly in Bosnia. The United States participated without congressional authorization in airlifts into Sarajevo, naval monitoring of sanctions, aerial enforcement of a "no-fly zone," and aerial enforcement of safe havens.

Because some of the U.S. action has been taken within a NATO framework, action in Bosnia has raised the broader issue of whether action under NATO is exempt from the requirements of the War Powers Resolution or its standard for the exercise of war powers under the Constitution. Article 11 of the North Atlantic Treaty states that its provisions are to be carried out by the parties "in accordance with their respective constitutional processes," inferring some role for Congress in the event of war. Section 8(a) of the War Powers Resolution states that authority to introduce U.S. forces into hostilities is not to be inferred from any treaty, ratified before or after 1973, unless implementing legislation specifically authorizes such introduction and says it is intended to constitute an authorization within the meaning of the War Powers Resolution. Section 8(b) states that nothing in the Resolution should be construed to require further authorization for U.S. participation in the headquarters operations of military commands established before 1973, such as NATO headquarters operations.

On August 13, 1992, the U.N. Security Council adopted Resolution 770 calling on all nations to take "all measures necessary" to facilitate the delivery of humanitarian assistance to Sarajevo. On August 11, 1992, the Senate had passed S.Res. 330 urging the President to work for such a resolution and pledging funds for participation, but saying that no U.S. military personnel should be introduced into hostilities without clearly defined objectives. On the same day, the House passed H.Res. 554 urging the Security Council to authorize measures, including the use of force, to ensure humanitarian relief. Thus, both chambers of Congress supported action but not by legislation authorizing the use of U.S. forces. For details of congressional actions relating to Bosnia from 1993 through 1995, see CRS Report RL32267, *The War Powers Resolution: After Thirty Years*.

In late 1995, the issue of war powers and Bosnia was raised again as President Clinton sent over 20,000 American combat troops to Bosnia as part of a NATO-led peacekeeping force. In December 1995, Congress considered and voted on a number of bills and resolutions, but the House and Senate could not come to consensus on any single measure. Subsequently, President Clinton in December 1996, agreed to provide up to 8,500 ground troops to participate in a NATO-led follow-on force in Bosnia termed the Stabilization Force (SFOR). On March 18, 1998, the House defeated by a vote of 193-225, H.Con.Res. 227, a resolution directing the President, pursuant to section 5(c) of the War Powers Resolution to remove United States Armed Forces from the Republic of Bosnia and Herzegovina.(H.Rept. 105-442). (For additional information, see CRS Report RS21774: *Bosnia and International Security Forces: Transition from NATO to the European Union in 2004*, and CRS Report RL32267, *The War Powers Resolution: After Thirty Years*.)

Kosovo

The issue of presidential authority to deploy forces in the absence of congressional authorization, under the War Powers Resolution, or otherwise, became an issue of significant controversy in late March 1999 when President Clinton ordered U.S. military forces to participate in a NATO-led military operation in Kosovo. This action has become the focus of an on-going policy debate over the purpose and scope of U.S. military involvement in Kosovo. The President's action to commit forces to the NATO Kosovo operation also led to a suit in Federal District Court for the District of Columbia by Members of Congress seeking a judicial finding that the President was violating the War Powers Resolution and the Constitution by using military forces in Yugoslavia in the absence of authorization from the Congress.

The Kosovo controversy began in earnest when on March 26, 1999, President Clinton notified the Congress "consistent with the War Powers Resolution", that on March 24, 1999, U.S. military forces, at his direction and in coalition with NATO allies, had commenced air strikes against Yugoslavia in response the Yugoslav government's campaign of violence and repression against the ethnic Albanian population in Kosovo. Prior to the President's action, the Senate, on March 23, 1999, had passed, by a vote of 58-41, S.Con.Res. 21, a non-binding resolution expressing the sense of the Congress that the President was authorized to conduct "military air operations and missile strikes in cooperation with our NATO allies against the Federal Republic of Yugoslavia (Serbia and Montenegro)."

Subsequently, the House voted on a number of measures relating to U.S. participation in the NATO operation in Kosovo. On April 28, 1999, the House of Representatives passed H.R. 1569, by a vote of 249-180. This bill would prohibit the use of funds appropriated to the Defense Department from being used for the deployment of "ground elements" of the U.S. Armed Forces in the Federal Republic of Yugoslavia unless that deployment is specifically authorized by law. On that same day the House defeated H.Con.Res. 82, by a vote of 139-290. This resolution would have directed the President, pursuant to section 5(c) of the War Powers Resolution, to remove U.S. Armed Forces from their positions in connection with the present operations against the Federal Republic of Yugoslavia. On April 28, 1999, the House also defeated H.J.Res. 44, by a vote of 2-427. This joint resolution would have declared a state of war between the United States and the "Government of the Federal Republic of Yugoslavia." The House on that same day also defeated, on a 213-213

tie vote, S.Con.Res. 21, the Senate resolution passed on March 23, 1999, that supported military air operations and missile strikes against Yugoslavia. On April 30, 1999, Representative Tom Campbell and 17 other members of the House filed suit in Federal District Court for the District of Columbia seeking a ruling requiring the President to obtain authorization from Congress before continuing the air war, or taking other military action against Yugoslavia.

The Senate, on May 4, 1999, by a vote of 78-22, tabled S.J.Res. 20, a joint resolution, sponsored by Senator John McCain, that would authorize the President "to use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia (Serbia and Montenegro)." The House, meanwhile, on May 6, 1999, by a vote of 117-301, defeated an amendment by Representative Istook to H.R. 1664, the FY1999 defense supplemental appropriations bill, that would have prohibited the expenditure of funds in the bill to implement any plan to use U.S. ground forces to invade Yugoslavia, except in time of war. Congress, meanwhile, on May 20, 1999 cleared for the President's signature, H.R. 1141, an emergency supplemental appropriations bill for FY1999, that provided billions in funding for the existing U.S. Kosovo operation.

On May 25, 1999, the 60th day had passed since the President notified Congress of his actions regarding U.S. participation in military operations in Kosovo. Representative Campbell, and those who joined his suit, noted to the Federal Court that this was a clear violation of the language of the War Powers Resolution stipulating a withdrawal of U.S. forces from the area of hostilities occur after 60 days in the absence of congressional authorization to continue, or a presidential request to Congress for an extra 30 day period to safely withdraw. The President did not seek such a 30-day extension, noting instead that the War Powers Resolution is constitutionally defective. On June 8, 1999, Federal District Judge Paul L. Friedman dismissed the suit of Representative Campbell and others that sought to have the court rule that President Clinton was in violation of the War Powers Resolution and the Constitution by conducting military activities in Yugoslavia without having received prior authorization from Congress. The judge ruled that Representative Campbell and others lacked legal standing to bring the suit (*Campbell v. Clinton*, 52 F. Supp. 2d 34 (D.D.C. 1999)). Representative Campbell appealed the ruling on June 24, 1999, to the U.S. Court of Appeals for the District of Columbia. The appeals court agreed to hear the case. On February 18, 2000, the appeals court affirmed the opinion of the District Court that Representative Campbell and his co-plaintiffs lacked standing to sue the President. (Campbell v. Clinton, 203 F.3d 19 (D.C. Cir. 2000). On May 18, 2000, Representative Campbell and 30 other Members of Congress appealed this decision to the United States Supreme Court. On October 2, 2000, the United States Supreme Court, without comment, refused to hear the appeal of Representative Campbell thereby letting stand the holding of the U.S. Court of Appeals. (Campbell v. Clinton, *cert. denied*, 531U.S. 815 Oct. 2, 2000). On May 18, 2000, the Senate defeated by, a vote of 47-53, an amendment to S. 2521, the Senate's version of the Military Construction Appropriations Act, FY2001, that would have, among other things, terminated funding for the continued deployment of U.S. ground combat troops in Kosovo after July 1, 2001 unless the President sought and received Congressional authorization to keep U.S. troops in Kosovo. (For detailed discussion of major issues see CRS Report RL31053, *Kosovo and U.S. Policy;* CRS Report RL30352, *War Powers Litigation Since the Enactment of the War Powers Resolution*).

Iraq-Post 1991

During the week of October 3, 1994, Iraq began sending two additional divisions to join regular forces in southern Iraq, close to the border of Kuwait. On October 8 President Clinton responded by sending about 30,000 additional U.S. forces and additional combat planes to join the forces already in the Gulf area. He said the United States would honor its commitment to defend Kuwait and enforce U.N. resolutions on Iraq. Congress recessed on October 8 until November 29, 1994, so it did not discuss the issue of congressional authorization. On October 28 President Clinton reported to Congress that by October 15 there were clear indications that Iraq had redeployed its forces to their original location. On November 7 the Defense Department announced 7,000 of the U.S. forces would be withdrawn before Christmas.

Earlier, three continuing situations in Iraq since the end of Desert Storm brought about the use of U.S. forces and thus raised war powers issues. The first situation resulted from the Iraqi government's repression of Kurdish and Shiite groups. U.N. Security Council Resolution 688 of April 5, 1991, condemned the repression of the Iraqi civilian population and appealed for contributions to humanitarian relief efforts. The second situation stemmed from the U.N. cease-fire resolution of April 3, 1991, Security Council Resolution 687, which called for Iraq to accept the destruction or removal of chemical and biological weapons and international control of its nuclear materials.

The third situation was related to both of the earlier ones. On August 26, 1992, the United States, Britain, and France began a "no-fly" zone, banning Iraqi fixed wing and helicopter flights south of the 32nd parallel and creating a limited security zone in the south, where Shiite groups are concentrated. After violations of the no-fly zones and various other actions by Iraq, on January 13, 1993, the outgoing Bush Administration announced that aircraft from the United States and coalition partners had attacked missile bases in southern Iraq and that the United States was deploying a battalion task force to Kuwait to underline the U.S. continuing commitment to Kuwait's independence. On January 6, 1993, the United States gave Iraq an ultimatum to remove newly deployed missiles in the no-fly zone. On January 19, 1993, President George H.W. Bush reported to Congress that U.S. aircraft on December 27, 1992, had shot down an Iraqi aircraft that had entered the no-fly zone and had undertaken further military actions on January 13, 17, and 18.

President Clinton said on January 21, 1993, that the United States would adhere to the policy toward Iraq set by the former Bush Administration, and on January 22, 23, April 9 and 18, June 19, and August 19, 1993, U.S. aircraft fired at targets in Iraq after pilots sensed Iraqi radar or anti-aircraft fire directed at them. A number of such incidents occurred while planes patrolled the no-fly zone. On June 6, 1994, President Clinton reported that over the previous two years, the northern no-fly zone had deterred Iraq from a military offensive in the northern zone. Iraqi forces had responded to the no-fly zone in the south, he reported, by continuing to use land-based artillery to shell marsh villages. In addition, Iraq was conducting a large search and destroy operation and razing and burning marsh villages, in violation of U.N. Security Council Resolution 688. Until Iraq fully complied with all relevant U.N. Security Council resolutions, he reported, the United States would maintain sanctions and other measures designed to achieve compliance.

A war powers issue for years was whether the use of U.S. force in Iraq in the period after the early 1991 Desert Storm conflict had been authorized by Congress. P.L. 102-1 authorized the President to use U.S. armed forces pursuant to U.N. Security Council Resolution 678 to achieve implementation of previous Security Council Resolutions; Security Council Resolution 687 was adopted after this. On August 2, 1991, the Senate adopted an amendment to the Defense Authorization bill supporting the use of all necessary means to achieve the goals of Resolution 687. Senator Dole said the amendment was not intended to authorize the use of force by the President, and that in his view in the current circumstances the President required no specific authorization from Congress. As enacted, Section 1095 of P.L. 102-190 states the sense of Congress that it supports the use of all necessary means to achieve the goals of Security Council Resolution 687 as being consistent with the Authorization for Use of Military Force Against Iraq Resolution. The bill also included an amendment by Senator Pell supporting the use of all necessary means to protect Iraq's Kurdish minority, consistent with relevant U.N. resolutions and authorities contained in P.L. 102-1 (Section 1096 of P.L. 102-190.)

In addition to these continuing situations, on June 28, 1993, President Clinton reported to Congress that on June 26 U.S. naval forces had launched a Tomahawk cruise missile strike on the Iraqi Intelligence Service's main command and control complex in Baghdad and that the military action was completed. He said the Iraqi Intelligence Service had planned the failed attempt to assassinate former President Bush during his visit to Kuwait in April 1993. On September 5, 1996, President Clinton reported to Congress on U.S. military actions in Iraq to obtain compliance with U.N. Security Council Resolutions, especially in light of attacks by Iraqi military forces against the Kurdish-controlled city of Irbil. U.S. actions ordered by the President included extending the no-fly zone in southern Iraq from 32 to 33 degrees north latitude, and conduction cruise missile attacks from B-52H bombers and ships in the USS Carl Vinson Battle Group against fixed, surface-to- air missile sites, command and control centers, and air defense control facilities south of the 33rd parallel in Iraq. Except for the report of June 28, 1993, Presidents Bush and Clinton did not cite the War Powers Resolution in the above reports. They submitted them "consistent with" P.L. 102-1, which requires the President to submit a report to the Congress at least once every 60 days on the status of efforts to obtain compliance by Iraq with the U.N. Security Council resolution adopted in response to the Iraq aggression.

Starting in 1998 through the end of the Clinton Administration, Iraq's refusal to permit U.N. weapons inspection teams to have access to various Iraqi sites, and Iraqi threats to U.S. aircraft policing the "no-fly zones" resulted in U.S. military action on numerous occasions against Iraqi military forces and targets in the "no-fly zones." President Clinton chose to report these actions under the requirements of P.L. 102-1, rather than the War Powers Resolution. In early February 2001, President G.W. Bush authorized U.S. aircraft, to attack Iraqi radar installations in Southern Iraq believed to threaten allied forces enforcing the "no-fly zone." Additional bombings of Iraqi sites were authorized and took place from the summer of 2001 into March 2003. Such actions, when reported in the past, were done under P.L. 102-1. In a report to Congress on January 20, 2003, pursuant to P. L. 107-243, President Bush stated that information required to be reported regarding actions taken against Iraq required by section 3 of P.L. 102-1 would in the future be included in the reports required by P.L. 107-243. On March 19, 2003, President Bush directed U.S. Armed Forces to commence combat operations against Iraq to enforce its disarmament. Congressional authorization for such an action was provided for in P.L. 107-243 signed into law on October

16, 2002. Since he announced the end of major combat operations against Iraq on May 1, 2003, the President has made periodic reports on the current situation in Iraq "consistent with" P. L. 107-243, which have become the equivalent of reports to Congress envisioned by the War Powers Resolution. For the most recent of these reports to Congress see House Document 108-180, 108th Congress, 2nd session, April 21, 2004. (For further related information, see CRS Report RL31701, *Iraq: U.S. Military Operations*, and CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*.)

Haiti

On July 3, 1993, Haitian military leader Raoul Cedras and deposed President Jean-Bertrand Aristide signed an agreement at Governors Island providing for the restoration of President Aristide on October 30. The United Nations and Organization of American States took responsibility for verifying compliance. Because the Haitian authorities did not comply with the agreement, on October 13, 1993, the U.N. Security Council voted to restore sanctions against Haiti. On October 20, President Clinton submitted a report "consistent with the War Powers Resolution" that U.S. ships had begun to enforce the U.N. embargo. Some Members of Congress complained that Congress had not been consulted on or authorized the action. On October 18, 1993, Senator Dole said he would offer an amendment to the Defense Appropriations bill (H.R. 3116) which would require congressional authorization for all deployments into Haitian waters and airspace unless the President made specified certifications. Congressional leaders and Administration officials negotiated on the terms of the amendment. As enacted, Section 8147 of P.L. 103-139 stated the sense that funds should not be obligated or expended for U.S. military operations in Haiti unless the operations were (1) authorized in advance by Congress, (2) necessary to protect or evacuate U.S. citizens, (3) vital to the national security and there was not sufficient time to receive congressional authorization, or (4) the President submitted a report in advance that the intended deployment met certain criteria.

On May 6, 1994, the U.N. Security Council adopted Resolution 917 calling for measures to tighten the embargo. On June 10, 1994, President Clinton announced steps being taken to intensify the pressure on Haiti's military leaders that included assisting the Dominican Republic to seal its border with Haiti, using U.S. naval patrol boats to detain ships suspected of violating the sanctions, a ban on commercial air traffic, and sanctions on financial transactions. As conditions in Haiti worsened, President Clinton stated he would not rule out the use of force, and gradually the use of force appeared certain. Many Members continued to contend congressional authorization was necessary for any invasion of Haiti. On July 31, the U.N. Security Council authorized a multinational force to use "all necessary means to facilitate the departure from Haiti of the military leadership ... on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States" (Resolution 940, 1994).

On August 3, the Senate adopted an amendment to the Department of Veterans appropriation, H.R. 4624, by a vote of 100-0 expressing its sense that the Security Council Resolution did not constitute authorization for the deployment of U.S. forces in Haiti under the Constitution or the War Powers Resolution, but the amendment was not agreed to in conference. President Clinton said the same day that he would welcome the support of Congress but did not agree that he was constitutionally mandated to obtain it. On September

15, 1994, in an address to the Nation, President Clinton said he had called up the military reserve and ordered two aircraft carriers into the region. His message to the military dictators was to leave now or the United States would force them from power. The first phase of military action would remove the dictators from power and restore Haiti's democratically elected government. The second phase would involve a much smaller force joining with forces from other U.N. members which would leave Haiti after 1995 elections were held and a new government installed.

While the Defense Department continued to prepare for an invasion within days, on September 16 President Clinton sent to Haiti a negotiating team of former President Jimmy Carter, former Joint Chiefs of Staff Chairman Colin Powell, and Senate Armed Services Committee Chairman Sam Nunn. Again addressing the Nation on September 18, President Clinton announced that the military leaders had agreed to step down by October 15, and agreed to the immediate introduction of troops from the 15,000 member international coalition beginning September 19. He said the agreement was only possible because of the credible and imminent threat of multinational force. He emphasized the mission still had risks and there remained possibilities of violence directed at U.S. troops, but the agreement minimized those risks. He also said that under U.N. Security Council resolution 940, a 25-nation international coalition would soon go to Haiti to begin the task of restoring democratic government. Also on September 18, President Clinton reported to Congress on the objectives in accordance with the sense expressed in Section 8147 (c) of P.L. 103-139, the FY1994 Defense Appropriations Act.

U.S. forces entered Haiti on September 19, 1994. On September 21, President Clinton reported "consistent with the War Powers Resolution" the deployment of 1,500 troops, to be increased by several thousand. (At the peak in September there were about 21,000 U.S. forces in Haiti.) He said the U.S. presence would not be open-ended but would be replaced after a period of months by a U.N. peacekeeping force, although some U.S. forces would participate in and be present for the duration of the U.N. mission. The forces were involved in the first hostilities on September 24 when U.S. Marines killed ten armed Haitian resisters in a fire-fight.

On October 3, 1994, the House Foreign Affairs Committee reported H.J.Res. 416 authorizing the forces in Haiti until March 1, 1995, and providing procedures for a joint resolution to withdraw the forces. In House debate on October 6 the House voted against the original contents and for the Dellums substitute. As passed, H.J.Res. 416 stated the sense that the President should have sought congressional approval before deploying U.S. forces to Haiti, supporting a prompt and orderly withdrawal as soon as possible, and requiring a monthly report on Haiti as well as other reports. This same language was also adopted by the Senate on October 6 as S.J.Res. 229, and on October 7 the House passed S.J.Res. 229. President Clinton signed S.J.Res. 229 on October 25, 1994 (P.L. 103-423).

After the U.S. forces began to disarm Haitian military and paramilitary forces and President Aristide returned on October 15, 1994, the United States began to withdraw some forces. On March 31, 1995, U.N. peacekeeping forces assumed responsibility for missions previously conducted by U.S. military forces in Haiti. By September 21, 1995, President Clinton reported the United States had 2,400 military personnel in Haiti as participants in the U.N. Mission in Haiti (UNMIH), and 260 U.S. military personnel assigned to the U.S. Support Group Haiti. On December 5, 1997, President Clinton stated that he intends to keep

some military personnel in Haiti, even though United Nations peacekeeping forces were withdrawing. The Pentagon stated that U.S. military personnel in Haiti would be about 500, consisting mainly of engineering and medical units, with a combat element responsible for protecting the U.S. contingent. On March 2, 2004, the President reported to Congress "consistent with the War Powers Resolution" that, on February 29, he had sent about "200 additional U.S. combat-equipped, military personnel from the U.S. Joint Forces Command" to Port-au-Prince, Haiti for a variety of purposes, including preparing the way for a UN Multinational Interim Force, and otherwise supporting UN Security Council Resolution 1529 (2004). For further information on Haiti, see CRS Report RL32294, *Haiti: Developments and U.S. Policy Since 1991 and Current Congressional Concerns*.

Somalia

In Somalia, the participation of U.S. military forces in a U.N. operation to protect humanitarian assistance, which began in December 1992, became increasingly controversial as fighting and casualties increased and objectives appeared to be expanding. On October 7, 1993, President Clinton announced that all U.S. forces would be withdrawn by March 31, 1994, and most forces left by that date. The remaining 58 Marines, who had remained to protect U.S. diplomats, were withdrawn September 15, 1994.

A major issue for Congress was whether to authorize U.S. action in Somalia. On February 4, 1993, the Senate passed S.J.Res. 45 to authorize the President to use U.S. armed forces pursuant to U.N. Security Council Resolution 794. S.J.Res. 45 stated it is intended to constitute the specific statutory authorization under Section 5(b) of the War Powers Resolution. On May 25, 1993, the House amended and passed S.J.Res. 45. The amendment authorized U.S. forces to remain for one year. S.J.Res. 45 was then sent to the Senate for its concurrence, but the measure did not reach the floor.

As sporadic fighting resulted in the deaths of Somali and U.N. forces, including Americans, controversy over the operation intensified. On September 9, 1993, the Senate adopted an amendment to S. 1298, the Defense Authorization Bill, expressing the sense of Congress that the President by November 15, 1993, should seek and receive congressional authorization for the continued deployment of U.S. forces to Somalia. It asked that the President consult with Congress and report the goals, objectives, and anticipated jurisdiction of the U.S. mission in Somalia by October 15, 1993. On September 29, the House adopted a similar amendment to its bill, H.R. 2401. On October 7, the President consulted with congressional leaders from both parties for over two hours on Somalia policy and also announced that U.S. forces would be withdrawn by March 31, 1994.

On October 15, 1993, the Senate adopted an amendment by Senator Byrd to H.R. 3116, the Defense Department Appropriations Act for FY1994, cutting off funds for U.S. military operations in Somalia after March 31, 1994, unless the President obtained further spending authority from Congress. The Senate approved the use of military operations only for the protection of American military personnel and bases and for helping maintain the flow of relief aid by giving the U.N. forces security and logistical support. The amendment, which became Section 8151 of P.L. 103-139, required U.S. forces in Somalia to remain under the command and control of U.S. commanders. In addition, on November 9, 1993, the House adopted H.Con.Res. 170, using Section 5(c) of the War Powers Resolution to direct the

President to remove forces from Somalia by March 31, 1994; sponsors stated it was a non-binding measure, and the Senate did not act on the measure. The Defense Appropriations Act for FY1995 (P.L. 103-335, signed September 30, 1994) prohibited the use of funds for the continuous presence of U.S. forces in Somalia, except for the protection of U.S. personnel, after September 30, 1994.

On November 4, the U.N. Security Council decided to end the U.N. mission in Somalia by March 31, 1995. On March 3, 1995, U.S. forces completed their assistance to United Nations forces evacuating Somalia.

Instances Formally Reported Under the War Powers Resolution

Presidents have submitted 115 reports to Congress as a result of the War Powers Resolution. Of these, President Ford submitted 4, President Carter one, President Reagan 14, President George H.W. Bush 7, President Clinton 60, and President George W. Bush 29. For a summary of the 111 reports submitted by the Presidents from 1975-2003, see CRS Report RL32267, *The War Powers Resolution: After Thirty Years*. The following is a summary of reports submitted by President Bush George W. Bush since January 2004.

(112) On January 22, 2004, the President reported to Congress "consistent with the War Powers Resolution" that the United States was continuing to deploy combat equipped military personnel Bosnia and Herzegovina in support of NATO's Stabilization Force (SFOR) and its peacekeeping efforts in this country. About 1,800 U.S. personnel are participating.

(113) On February 25, 2004, the President reported to Congress "consistent with the War Powers Resolution" that, on February 23, he had sent a combat-equipped "security force" of about "55 U.S. military personnel from the U.S. Joint Forces Command" to Port-au-Prince, Haiti to augment the U.S. Embassy security forces there and to protect American citizens and property in light of the instability created by the armed rebellion in Haiti.

(114) On March 2, 2004, the President reported to Congress "consistent with the War Powers Resolution" that on February 29 he had sent about "200 additional U.S. combat-equipped, military personnel from the U.S. Joint Forces Command" to Port-au-Prince, Haiti for a variety of purposes, including preparing the way for a UN Multinational Interim Force, and otherwise supporting UN Security Council Resolution 1529 (2004).

(115) On March 20, 2004, the President reported to Congress "consistent with the War Powers Resolution," a consolidated report giving details of multiple on-going United States military deployments and operations "in support of the global war on terrorism (including in Afghanistan)," as well as operations in Bosnia and Herzegovina, Kosovo, and Haiti. In this report, the President noted that U.S. anti-terror related activities were underway in Georgia, Djibouti, Kenya, Ethiopia, Yemen, and Eritrea. He further noted that U.S. combat-equipped military personnel continued to be deployed in Kosovo as part of the NATO-led KFOR (1,900 personnel); in Bosnia and Herzegovina as part of the NATO-led SFOR (about

1,100 personnel); and approximately 1,800 military personnel were deployed in Haiti as part of the U.N. Multinational Interim Force.

Consultation with Congress

Section 3 of the War Powers Resolution requires the President "in every possible instance" to consult with Congress before introducing U.S. armed forces into situations of hostilities and imminent hostilities, and to continue consultations as long as the armed forces remain. A review of instances involving the use of armed forces since passage of the Resolution, listed above, indicates there has been very little consultation with Congress under the Resolution when consultation is defined to mean seeking advice prior to a decision to introduce troops. Presidents have met with congressional leaders after the decision to deploy was made but before commencement of operations.

One problem is the interpretation of when consultation is required. The War Powers Resolution established different criteria for consultation than for reporting. Consultation is required only before introducing armed forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," the circumstances triggering the time limit. A second problem is the meaning of the term consultation. The executive branch has often taken the view that the consultation requirement has been fulfilled when from the viewpoint of some Members of Congress it has not. The House report on the War Powers Resolution said, "... consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated." A third problem is who represents Congress for consultation purposes. The House version specifically called for consultation between the President and the leadership and appropriate committees. This was changed to less specific wording in conference, however, to provide some flexibility. Some Members have introduced proposals to specify a consultation group.

Issues for Congress

An immediate issue for Congress when the President introduces troops into situations of potential hostilities is whether to invoke Section 4(a)(1) of the War Powers Resolution and trigger a durational limit for the action unless Congress authorizes the forces to remain. If Congress concurs in a President's action, application of the Resolution may be desirable either to legitimize the action and strengthen it by making clear congressional support for the measure or to establish the precedent that the Resolution does apply in such a situation. On the other hand, some may believe it is preferable to leave the President more flexibility of action than is possible under the Resolution. Or some may not wish to have a formal vote on either the issue of applying the Resolution or the merits of utilizing armed forces in that case. If Congress does not concur in an action taken by a president, the Resolution offers a way to terminate it.

A longer-term issue is whether the War Powers Resolution is working or should be amended. Some contend that it has been effective in moderating the President's response

to crisis situations because of his awareness that certain actions would trigger its reporting and legislative veto provisions. Or they suggest that it could be effective if the President would comply fully or Congress would invoke its provisions. Others believe it is not accomplishing its objectives and suggest various changes. Some have proposed that the Resolution return to the original Senate-passed version, which would enumerate circumstances in which the President needed no congressional authorization for use of armed forces (namely to respond to or forestall an armed attack against the United States or its forces or to protect U.S. citizens while evacuating them) but prohibit any other use or any permissible use for more than 30 days unless authorized by Congress. Others would replace the automatic requirement for withdrawal of troops after 60 days with expedited procedures for a joint resolution authorizing the action or requiring disengagement. Still others would repeal the Resolution on grounds that it restricts the President's effectiveness in foreign policy or is unconstitutional.

Several Members have suggested establishing a consultative group to meet with the President when military action is being considered. Senators Byrd, Nunn, Warner, and Mitchell introduced S.J.Res. 323 in 1988 and S. 2 in 1989 to establish a permanent consultation group of 18 Members consisting of the leadership and the ranking and minority members of the Committees on Foreign Relations, Armed Services, and Intelligence. The bill would permit an initial consultative process to be limited to a core group of 6 Members — the majority and minority leaders of both chambers plus the Speaker of the House and President pro tempore of the Senate. On October 28, 1993, House Foreign Affairs Chairman Lee Hamilton introduced H.R. 3405 to establish a congressional consultative group equivalent to the National Security Council.

Thus far, however, executive branch officials and congressional leaders, who themselves have varying opinions, have been unable to find mutually acceptable changes in the War Powers Resolution. President Clinton, in Presidential Decision Directive 25 signed May 3, 1994, supported legislation to amend the Resolution along the lines of the Mitchell, Nunn, Byrd, and Warner proposal of 1989, to establish a consultative mechanism and also eliminate the 60-day withdrawal provisions. Although many agreed on the consultation group, supporters of the legislation contended the time limit had been the main flaw in the War Powers Resolution, whereas opponents contended the time limit provided the teeth of the Resolution. The difficulty of reaching consensus in Congress on what action to take is reflected in the fact that in the 104th Congress, only one measure, S. 5, introduced January 4, 1995, by then Majority Leader Dole was subject of a hearing. S. 5, if enacted, would have repealed most of the existing War Powers Resolution. An effort to repeal most of the War Powers Resolution in the House on June 7, 1995, through an amendment to the Foreign Assistance and State Department Authorization Act for FY1996-97 (H.R. 1561) by Representative Hyde, failed (201-217). Other than these instances, no other War Powers related legislation was even considered during the 104th Congress.

On March 18, 1998, the House defeated H.Con.Res. 227, a resolution that would have directed the President, pursuant to section 5(c) of the War Powers Resolution to remove United States Armed Forces from the Republic of Bosnia and Herzegovina (H.Rept. 105-442). It was the hope of Representative Tom Campbell, its sponsor, that passage of the resolution could lead to a court case that would address the constitutionality of the War Powers Resolution. On March 31, 1998, the House passed a Supplemental Appropriations bill (H.R. 3579) that would ban use of funds appropriated in it for conduct of offensive

operations against Iraq, unless such operations were specifically authorized by law. This provision was dropped in the conference with the Senate. On June 24, 1998, the House passed H.R. 4103, the Defense Department Appropriations bill for FY1999, with a provision by Representative Skaggs that banned the use of funds appropriated or otherwise made available by this act "to initiate or conduct offensive military operations by United States Armed Forces except in accordance with the war powers clause of the Constitution (Article 1, Section 8), which vests in Congress the power to declare and authorize war and to take certain specified, related actions." The Skaggs provision was stricken by the House-Senate conference committee on H.R. 4103. No further War Powers-related actions were taken by Congress by the adjournment of the 105th Congress.

During the 106th Congress, efforts were made to force the President to seek congressional authority for military operations in Kosovo, leading to votes in the House and Senate on that issue. Subsequently, Representative Tom Campbell and others sued the President in Federal Court in an effort to clarify congressional-Executive authority in this area. A Federal District Court and an Appeals Court refused to decide the case on the merits, instead holding that the plaintiffs lacked standing to sue. On October 2, 2000, the United States Supreme Court, let stand the holding of the U.S. Appeals Court (see discussion above under Kosovo).

During the first session of the 107th Congress, the Congress passed S.J.Res. 23, on September 14, 2001, in the wake of the terrorist attacks against the World Trade Center in New York City, and the Pentagon building in Arlington, Virginia. This legislation, titled the "Authorization for Use of Military Force," passed the Senate by a vote of 98-0; the House of Representatives passed it by a vote of 420-1. This joint resolution authorizes the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Congress further declared in the joint resolution that "Consistent with section 8(a)(1) of the War Powers resolution," the above language is "intended to constitute specific statutory authorization within the meaning of section 5(b) the War Powers Resolution." S.J.Res. 23 further stated that "Nothing in this resolution supersedes any requirement of the War Powers Resolution." President George W. Bush signed S.J.Res. 23 into law on September 18, 2001 (P.L. 107-40, 115 Stat. 224).

During the second session of the 107th Congress, the Congress passed H.J.Res. 114, the Authorization for the Use of Force Against Iraq Resolution of 2002 (P.L. 107-243). On October 16, 2002, President Bush signed this legislation into law. This statute authorizes the President to use the armed forces of the United States

> as he determines to be necessary and appropriate in order to (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

Prior to using force under this statute the President is required to communicate to Congress his determination that the use of diplomatic and other peaceful means will not "adequately protect the United States ... or ... lead to enforcement of all relevant United Nations Security Council resolutions" and that the use of force is "consistent" with the battle against terrorism.

The statute also stipulates that it is "intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution." It further requires the President to make periodic reports to Congress "on matters relevant to this joint resolution." Finally, the statute expresses Congress' "support" for the efforts of the President to obtain "prompt and decisive action by the Security Council" to enforce Iraq's compliance with all relevant Security Council resolutions.

P.L. 107-243 clearly confers broad authority on the President to use force. The authority granted is **not limited** to the implementation of **previously adopted** Security Council resolutions concerning Iraq but includes "all relevant ... resolutions." Thus, it appears to incorporate resolutions concerning Iraq that may by adopted by the Security Council in the future as well as those already adopted. The authority also appears to extend beyond compelling Iraq's disarmament to implementing the full range of concerns expressed in those resolutions. The President's exercise of the authority granted is **not** dependent upon a finding that Iraq was complicit in the attacks of September 11, 2001. Moreover, the authority conferred can be used for the purpose of defending "the national security of the United States against the continuing threat posed by Iraq. On March 19, 2003, President Bush used the authority granted in P.L. 107-243 by launching a military attack against Iraq. The President continues to use that authority for on-going military operations in Iraq.