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Declarations of War and Authorizations for the Use of Military Force: Background and Legal Implications

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Declarations of War and Authorizations for the Use of Military Force: Background and Legal Implications

Summary

From the Washington Administration to the present, there have been eleven separate formal declarations of war against foreign nations by the Congress, encompassing five different wars. In each case, a formal declaration of war by the Congress has been preceded by a presidential request for such an action, either in writing or in person before a joint session of Congress, citing what Presidents deemed to be compelling reasons for doing so. These reasons have included armed attacks on United States territory or its citizens, and attacks on or direct threats to United States rights or interests as a sovereign nation. In the nineteenth century; all declarations of war were passed by Congress in the form of a bill. In the twentieth century all declarations of war were passed in the form of a joint resolution. In every instance the President signed these measures into law. In cases where authorization for the use of force instead of a declaration of war was enacted, the form and content of the legislative vehicles varied, with the most common form either authorizations to use force against a named country or actions against unnamed hostile nations in a given region. In some cases the President has used force without seeking either a Congressional declaration of war or a statutory authorization for his actions.

The legal effects of a declaration of war and an authorization for the use of force are not wholly congruent. In contrast to an authorization for the use of force, a declaration of war, in and of itself, creates a state of war; and under international law that legitimates such things as the killing of the enemy, the seizure of its property, the apprehension of enemy aliens, *etc.* It also triggers application of the laws of war, such as the Hague and Geneva Conventions, although those treaties also apply to the circumstance of war. An authorization for the use of force does not appear to have these effects unless and until it leads to the existence of a state of war. Neither a declaration of war nor an authorization for the use of force automatically terminates treaties between the combatants, nor does either appear to affect the applicability of international law with respect to war crimes.

A declaration of war and an authorization for the use of force both have significant consequences for the War Powers Resolution. But in contrast to an authorization, a declaration of war brings into effect a number of standby statutory authorities such as the Trading with the Enemy Act, the Enemy Alien Act, and certain provisions of the Foreign Intelligence Surveillance Act. Most other standby authorities, however, are triggered not by a declaration of war but by a declaration of national emergency or the existence of a state of war. No standby authorities appear to be triggered exclusively by an authorization for the use of force.

This report provides historical background on the enactment of declarations of war and authorizations for the use of force and reproduces their texts in two appendices. It also provides extensive analysis of their effects under international and domestic law. Because the statutes that confer standby authority on the President and the executive branch potentially play such a large role in an armed conflict to which the United States is a party, the report includes an extensive listing and summary of the statutes that are triggered by a declaration of national emergency, a state of war,

and/or a declaration of war. The report concludes with a summary of the Congressional procedures applicable to a declaration of war and authorization for the use of force and to measures under the War Powers Resolution.

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Declarations of War and Authorizations for the Use of Military Force: Background and Legal Implications

Article I, § 8 of the Constitution vests in Congress the power “to declare War.” Pursuant to that power, Congress has enacted eleven declarations of war during the course of American history relating to five different wars, the most recent being those that were adopted during World War II. In addition, Congress has adopted a number of authorizations for the use of military force, the most recent being the joint resolution enacted on September 18, 2001, authorizing the use of United States Armed Forces against those responsible for the recent terrorist attacks against the United States. To buttress the nation’s ability to prosecute a war, Congress has also enacted numerous statutes which confer standby authority on the President or the executive branch and which can come into effect in time of war or national emergency.

This report examines a number of topics related to a declaration of war or authorization of military force by the United States Congress.¹ It provides historical background on each of the declarations of war that have been enacted and on several major authorizations for the use of force. It analyzes the implications of declarations of war and authorizations for the use of force under international law. It analyzes as well their implications with respect to domestic law and sets forth both detailed summaries of those effects in several major areas of the law and brief summaries of the more than 200 statutes that may come into effect in time of war or national emergency. Finally, it sets forth the procedures in Congress governing the consideration of declarations of war and of initiatives under the War Powers Resolution. Two appendices provide the texts of all of the declarations of war and the major authorizations for the use of force.

Previous Declarations of War

From the Washington Administration to the present, there have been eleven separate formal declarations of war against foreign nations by the Congress, encompassing five different wars.² In each case, a formal declaration of war by the

¹A number of analysts and attorneys have contributed to various parts of this report: Stan Bach, Elizabeth Bazan, Robert B. Burdette, Charles Doyle, Larry Eig, Chris Jennings, and Elizabeth Martin.

²The five wars were the War of 1812 with Great Britain, the War with Mexico in 1846, the War with Spain in 1898, the First World War, and the Second World War. The last formal declaration of war was on June 5, 1942, against Rumania [H.J.Res. 321], Act of Jun. 5, 1942,

(continued...)

Congress has been preceded by a presidential request for such an action, either in writing or in person before a joint session of Congress. In each such message to Congress requesting a war declaration, the President has cited what he deemed compelling reasons for doing so. These reasons have included armed attacks on United States territory or its citizens, and attacks on or direct threats to United States rights or interests as a sovereign nation. In the nineteenth century all declarations of war were passed by the Congress in the form of a bill. In the twentieth century all declarations of war were passed by the Congress in the form of a joint resolution. In every instance the President signed these measures into law.³

The circumstances of President McKinley's request for a declaration of war against Spain in 1898 stand in singular contrast to all others. McKinley's request for a declaration of war on April 25, 1898, was approved by a voice vote of both Houses of Congress on that date. His request was made after Spain had rejected a U.S. ultimatum that Spain relinquish its sovereignty over Cuba and permit Cuba to become an independent state. This ultimatum was supported by a joint resolution of Congress, signed into law on April 20, 1898, that among other things, declared Cuba to be independent, demanded that Spain withdraw its military forces from the island, and directed and authorized the President to use the U.S. Army, Navy and militia of the various states to achieve these ends. The war with Spain in 1898, in short, was not principally based on attacks on the United States but on a U.S. effort to end the Cuban insurrection against Spain, bring about Cuban independence, and restore a stable government and order on the island – outcomes that were believed by the United States to advance its interests.⁴

In the twentieth century, without exception, presidential requests for formal declarations of war by Congress were based on findings by the President that U.S.

²(...continued)

ch. 325, 56 Stat. 307. See Figure 1 for presidential and congressional actions taken regarding all formal declarations of war by the United States. See Appendix I for the texts of these declarations.

³It is beyond the scope of this report to detail the often complex circumstances underlying the nature, motivations, and timing of presidential requests for war declarations. Those matters have been the subject of important debates among scholars. The texts of specific presidential messages requesting a declaration of war are found in Richardson, James D. (ed.) *A Compilation of the Messages and Papers of the Presidents* (20 vol., Washington, 1897-1917.) as follows: Madison: Vol. II, pp. 484-490.; Polk: Vol. V, pp. 2287-2293.; McKinley: Vol. XIII, pp. 6296-6297; Wilson: Vol. XVI, pp. 8226-8233 (for Germany) and Vol. XVI, pp. 8399-8406 (for Austria-Hungary); Rosenman, Samuel I. (comp.) *The Public Papers and Addresses of Franklin D. Roosevelt*, 1941. New York, Harper & Brothers, 1950), pp. 514-515 (for Japan) and pp. 532 (for Germany and Italy); Rosenman, Samuel I. (comp.) *The Public Papers and Addresses of Franklin D. Roosevelt*, 1942. New York, Harper & Brothers, 1950), pp. 257 (declarations for Bulgaria, Hungary and Rumania).

⁴ Richardson, *Messages and Papers of the Presidents*, Vol XIII, pp. 6296-6297. Act of Apr. 25, 1898, ch. 189, 30 Stat. 364. Joint Resolution of April 20, 1898, [Res. 24] 30 Stat. 738. An earlier message by McKinley requesting authorization to use U.S. military force to resolve the Cuban-Spanish conflict was submitted to Congress on April 11, 1898. Richardson, *Messages and Papers of the Presidents*, Vol. XIII, pp. 6281-6292.

territory or sovereign rights had been attacked or threatened by a foreign nation. Although President Wilson had tried to maintain U.S. neutrality after the outbreak of the First World War, he regarded the German decision on February 1, 1917, to engage in unrestricted submarine warfare against all naval vessels in the war zone, including those of neutral states, to be an unacceptable assault on U.S. sovereign rights, which the German Government had previously pledged to respect. Wilson felt compelled by such events to request a congressional war declaration against Germany on April 2, 1917, stating that war had been “thrust upon the United States” by Germany’s actions. Congress passed a joint resolution declaring war which the President signed on April 6, 1917. Wilson delayed requesting a war declaration against Austria-Hungary until December 4, 1917. He did so then because that state, a German ally in the war, had become an active instrument of Germany against the United States. Congress passed a joint resolution declaring war which the President signed on December 7, 1917.⁵

President Franklin D. Roosevelt requested a declaration of war against Japan on December 8, 1941, because of direct military attacks by that nation against U.S. territory, military personnel and citizens in Hawaii and other outposts in the Pacific area. Congress passed a joint resolution declaring war which the President signed on December 8, 1941. After Germany and Italy each declared war on the United States on December 11, 1941, President Roosevelt asked Congress to respond in kind by recognizing that a state of war existed between the United States and those two nations. Congress passed separate joint resolutions declaring war on both nations which the President signed on December 11, 1941.⁶ On June 2, 1942, President Roosevelt asked that Congress declare war on Bulgaria, Hungary and Rumania, nations that were under the domination of Germany, were engaged in active military actions against the United States, and had themselves declared war on the United States. Congress passed separate joint resolutions declaring war on each of these nations. The President signed these resolutions on June 5, 1942.⁷

There is a striking similarity of language in the eight declarations of war passed by the Congress in the twentieth century. They all declare that a “state of war” exists between the United States and the other nation. With the one exception of the declaration of war against Austria-Hungary on December 7, 1917, the other seven declarations characterize the state of war as having been “thrust upon the United States” by the other nation. All eight of these twentieth century declarations of war state in identical language that the President is

⁵Richardson, *Messages and Papers of the Presidents*, Vol. XVI, pp. 8226-8233. Act of Apr. 6, 1917, ch.1, 40 Stat.1. [Germany]. Richardson, *Messages and Papers of the Presidents*, Vol. XVI, pp. 8399-8406. Act of Dec. 7, 1917, ch. 1, 40 Stat. 429.[Austria-Hungary].

⁶Rosenman, *Public Papers of President Roosevelt, 1941*, pp. 514-515. Act of Dec. 8, 1941, ch. 561, 55 Stat. 795.[Japan]; Rosenman, *Public Papers of President Roosevelt 1941*, p. 532. Act of Dec. 11, 1941, ch. 564, 55 Stat. 796. [Germany].Act of Dec. 11, 1941, ch. 565, 55 Stat. 797.[Italy].

⁷Rosenman, *Public Papers of President Roosevelt, 1942*, p. 257. Act of Jun. 5, 1942, ch. 323, 56 Stat. 307. [Bulgaria]. Act of Jun. 5, 1942, ch. 324, 56 Stat. 307.[Hungary]. Act of Jun. 5, 1942, ch. 325, 56 Stat. 307.[Rumania].

authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against [the 'Government' of the particular nation]; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.⁸

Key Dates And Actions Related To Formal U.S. Declarations Of War

- 1812 — Great Britain** Madison asked June 1, 1812. House passed on June 4, 1812 (79-49). Senate passed on June 17, 1812 (19-13). President signed on **June 18, 1812**. Act of Jun.18, 1812, ch. 102, 2 Stat. 755.
- 1846 — Mexico** Polk asked May 11, 1846. House passed on May 11, 1846 (174-14). Senate passed on May 12, 1846 (40-2). President signed on **May 13, 1846**. Act of May 13, 1846, ch.16, 9 Stat. 9.
- 1898 — Spain** McKinley asked April 25, 1898. Senate and House passed on April 25, 1898 by voice votes. McKinley signed on **April 25, 1898**. [H.R. 10086]. Act of Apr. 25, 1898, ch. 189, 30 Stat. 364. The bill made the war date retroactive to April 21, 1898.
- 1917 — World War I (Germany)** Wilson asked April 2, 1917. Senate passed on April 4, 1917 (82-6). House passed on April 6, 1917 (373-50). President signed on **April 6, 1917**. [S.J.Res. 1]. Act of Apr. 6, 1917, ch.1, 40 Stat. 1.
- 1917 — World War I (Austria-Hungary)** Wilson asked December 4, 1917. House passed on December 7, 1917 (365-1). Senate passed on December 7, 1917 (74-0). President signed on **December 7, 1917**. [S.J.Res. 111]. Act of Dec. 7, 1917, ch.1, 40 Stat. 429.
- 1941 — World War II (Japan)** Roosevelt asked December 8, 1941. Senate passed on December 8, 1941 (82-0). House passed on December 8, 1941 (388-1). President signed on **December 8, 1941**. [S.J.Res. 116]. Act of Dec. 8, 1941, ch. 561, 55 Stat. 795.
- 1941 — World War II (Germany)** Roosevelt asked December 11, 1941. Senate passed on December 11, 1941 (88-0). House passed on December 11, 1941 (393-0). President signed on **December 11, 1941**.
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⁸See complete texts of these twentieth century declarations of war in Appendix I.

[S.J.Res. 119]. Act of Dec. 11, 1941, ch. 564, 55 Stat. 796.

1941 — World War II (Italy) Roosevelt asked December 11, 1941. Senate passed on December 11, 1941 (90-0). House passed on December 11, 1941 (399-0). President signed on **December 11, 1941**. [S.J.Res. 120]. Act of Dec. 11, 1941, ch. 565, 55 Stat. 796.

1942 — World War II (Bulgaria) Roosevelt asked June 2, 1942. House passed on June 3, 1942 (357-0). Senate passed on June 4, 1942 (73-0). President signed on **June 5, 1942**. [H.J.Res. 319]. Act of Jun. 5, 1942, ch. 323, 56 Stat. 307.

1942 — World War II (Hungary) Roosevelt asked June 2, 1942. House passed on June 3, 1942 (360-0). Senate passed on June 4, 1942 (73-0). President signed on **June 5, 1942**. [H.J.Res. 320]. Act of Jun. 5, 1942, ch. 324, 56 Stat. 307.

1942 — World War II (Rumania) Roosevelt asked June 2, 1942. House passed on June 3, 1942 (361-0). Senate passed on June 4, 1942 (73-0). President signed on **June 5, 1942** [H.J.Res. 321]. Act of Jun. 5, 1942, ch. 325, 56 Stat. 307.

Key Authorizations of Use of Military Force

From the Administration of President John Adams to the present, there have been various instances when the United States Congress has enacted legislation authorizing the use of military force by the President instead of formally declaring war. In most cases legislation authorizing use of U.S. military force has been preceded by a specific request by the President for such authority. During the Presidencies of John Adams and Thomas Jefferson, these Chief Executives noted in messages to Congress that Congressional authorizations for use of force would be appropriate to enable the United States to protect its interests from predatory actions by foreign powers, in particular attacks on U.S. commercial vessels and persons on the high seas by France and by Tripoli. Congress responded with specific authorizations for use of force under the President's direction in 1798 against France and in 1802 against Tripoli. In 1815 President James Madison formally requested that Congress declare war against the Regency of Algiers in response to its attacks on U.S. citizens and commerce in the Mediterranean. Congress responded with an Act authorizing the President to utilize U.S. armed vessels to be used against Algerian naval attacks, but did not declare war.

In the period following World War II, Presidential requests for authority to use military force, when made, have usually been for broad authority to use U.S. military force in a specific region of the world in order to defend U.S. interests or friendly states as the President deems appropriate. More recently, due to the President's view of his broad and inherent Constitutional authority as Commander-in-Chief of the

Armed Forces, the President has welcomed *support* from the Congress in the form of legislation authorizing him to utilize U.S. military forces, but has not taken the view that he is *required* to obtain Congressional authorization to use them in a foreign conflict or engagement in support of U.S. interests.

What follows is a brief overview of key legislative authorizations of the use of military force by the President from the Administration of John Adams to the present.⁹ Appendix 2 provides the complete text of these specific authorizations.

France 1798

The United States during the 1790s had remained neutral in the conflict in Europe between France and Great Britain, and had only begun to develop a Navy. During the Administration of President John Adams, relations with France deteriorated as American commercial ships were being seized by French naval vessels. In response, in his message to Congress on May 16, 1797, President Adams argued that it would be prudent for the Congress to enact legislation that would address the actions of the French by authorizing, among other things, the use of U.S. naval vessels to defend against attacks on American shipping and citizens engaged in lawful commerce abroad. President Adams reiterated, in a message of March 19, 1798, his view of the necessity for Congressional action on his recommendations for the adoption of measures to protect American seafaring citizens and commerce.¹⁰

Congress subsequently responded to the President's recommendations by passing legislation, enacted on May 28, 1798, "more effectually to protect the Commerce and Coasts of the United States" by authorizing the President to instruct commanders of U.S. armed vessels to act against any "armed vessel" found to have committed or attempting to commit "depredations on the vessels" belonging to United States citizens, and to retake any ship or vessel of United States citizens that may have been captured by non-U.S. armed vessels.¹¹ Congress passed additional legislation, enacted on July 9, 1798, that authorized the President to instruct commanders of U.S. Navy warships to "subdue, seize and take any armed French vessel which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas...." The President was further granted the authority to grant special commissions to "owners of private armed ships and vessels of the United States," to permit them to

⁹There have been numbers of scholarly works written that address, in depth, the circumstances surrounding most of the measures discussed herein. It is beyond the scope of this report to itemize fully the complex diplomatic, political and military motivations that led to their enactment. For general background see: Bemis, Samuel Flagg, *A Diplomatic History of the United States*, New York, Holt, Rinehart and Winston, 5th ed. 1965; DeConde, Alexander, *A History of American Foreign Policy*, New York, Charles Scribner's Sons, 3rd ed., 2 vol. 1978; Bailey, Thomas A., *A Diplomatic History of the American People*, Englewood Cliffs, Prentice Hall, Inc., 10th ed. 1980.

¹⁰The text of President John Adams messages to Congress are found in Richardson, James D. (ed.) *A Compilation of the Messages and Papers of the Presidents* (20 vol., Washington, 1897-1917), Vol. I, pp. 223-229, 254-255; Also in *Annals of the Congress of the United States*, 5th. Congress, 1st session, pp.54-59,1271-1272.

¹¹Act of May 28, 1798, ch. 48, 2 Stat. 561.

lawfully subdue, seize, and capture “any armed French vessel,” and to recapture U.S. vessels, goods and effects of U.S. citizens with the same authority as U.S. Navy vessels, subject to instructions given by the President.¹²

Tripoli 1802

President Thomas Jefferson, in response to attacks on U.S. commercial shipping by vessels under the control of the Bey of Tripoli, noted in his message to Congress of December 8, 1801 that it could be prudent if Congress authorized the use of U.S. Navy force to protect U.S. shipping against Tripoli, including permitting them to take offensive action against Tripolitan vessels.¹³ Congress responded by passing legislation, enacted on February 6, 1802, that authorized the President to “equip, officer, man, and employ such of the armed vessels of the United States as may be judged requisite by the President of the United States, for protecting effectually the commerce and seamen thereof on the Atlantic ocean, the Mediterranean and adjoining seas.” The President was also authorized to utilize the U.S. Navy “to subdue, seize and make prize of all vessels, goods and effects belonging to the Bey of Tripoli, or his subjects...and to cause to be done all such other acts of precaution or hostility as the state of war will justify, and may, in his opinion, require.” The President was further granted the authority to grant special commissions to “owners of private armed vessels of the United States,” to permit them to lawfully subdue and seize “any Tripolitan vessel, goods or effects” with the same authority as U.S. Navy vessels, subject to instructions given by the President.¹⁴

Algeria 1815

President James Madison, after the conclusion of a peace treaty with Great Britain ending the War of 1812, sought to use the U.S. Navy to take action against vessels of the ruler and Regency of Algeria that had been seizing U.S. commercial vessels in the Mediterranean area. Due to acts of “overt and direct warfare against the citizens of the United States,” President Madison, on February 23, 1815, recommended that Congress declare the “existence of a state of war between the United States and the Dey and Regency of Algiers.”¹⁵ Congress did not declare war, but did pass legislation, enacted on March 3, 1815, that authorized the President to use the U.S. Navy, “as judged requisite by the President” to protect the “commerce and seamen” of the United States on the “Atlantic Ocean, the Mediterranean and adjoining seas.” The President was also authorized to utilize the U.S. Navy to seize

¹²Act of July 9, 1798, ch. 68, 2 Stat. 578.

¹³The text of President Thomas Jefferson’s message to Congress is found in Richardson, James D. (ed.) *A Compilation of the Messages and Papers of the Presidents* (20 vol., Washington, 1897-1917), Vol. I, pp. 314-320; Also in *Annals of the Congress of the United States*, 7th Congress, 1st session, pp. 12-16.

¹⁴Act of February 6, 1802, ch. 4, 1 Stat. 129.

¹⁵The text of President James Madison’s message to Congress is found in Richardson, James D. (ed.) *A Compilation of the Messages and Papers of the Presidents* (20 vol., Washington, 1897-1917), Vol. II, p. 539; Also in *Annals of the Congress of the United States*, 13th Congress, 3rd session, p. 269.

“all vessels, goods and effects belonging to the Dey of Algiers, or to his subjects...and to cause to be done all such other acts of precaution or hostility as the state of war will justify, and may, in his opinion, require.” The President was further granted the discretionary authority to grant special commissions to “owners of private armed vessels of the United States,” to permit them to lawfully subdue, seize, and capture “any Algerine vessel, goods or effects” with the same authority as U.S. Navy vessels, subject to instructions given by the President.¹⁶

Formosa 1955

In a message to Congress on January 24, 1955, President Dwight Eisenhower, detailed a series of “provocative political and military actions” by the Chinese Communist government that he believed established a “pattern of aggressive purpose.” That purpose was the “conquest of Formosa.” This situation, said Eisenhower, posed a “serious danger to the security of our country and of the entire Pacific area and indeed to the peace of the world.” The President believed that the U.S. should not wait for the United Nations to take steps to deal with the situation. The United States should be prepared to use its armed forces “to assure the security of Formosa and the Pescadores.” President Eisenhower stated that authority for “some of the actions which might be required would be inherent in the authority of the Commander-in-Chief.” He noted that until the Congress could act that he “would not hesitate, so far as my Constitutional powers extend, to take whatever emergency action might be forced upon us to protect the rights and security of the United States.” However, he believed that a “suitable Congressional resolution would clearly and publicly establish the authority of the President as Commander-in-Chief to employ” the U.S. armed forces “promptly and effectively” as he deemed necessary to deal with the circumstances. Such a resolution would “make clear the unified and serious intentions of our Government, our Congress and our people.”¹⁷

In response to the President’s request, Congress passed legislation on January 29, 1955, that authorized the President to “employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa, and the Pescadores against armed attack....” The President was also authorized to take “such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.” The resolution expired when the President determined and reported to Congress that the “peace and security of the area is reasonably assured....”¹⁸

¹⁶Act of March 3, 1815, Chap. 90, 3 Stat. 230.

¹⁷Public Papers of the Presidents of the United States. Dwight D. Eisenhower. 1955, Washington. U.S. Government Printing Office, 1959, pp. 207-211.

¹⁸P.L. 84-4, 69 Stat. 7, January 29, 1955 [H.J. Res. 159] The House passed the joint resolution by a vote of 410-3 on January 25, 1955; the Senate passed the joint resolution by a vote of 85-3 on January 28, 1955.

Middle East 1957

In a special message to Congress on January 5, 1957, President Dwight D. Eisenhower requested Congressional support for a program of military and economic cooperation with nations in the general area of the Middle East to “deal with the possibility of Communist aggression, direct or indirect” against nations in that region. As one component of this military and economic assistance program, President Eisenhower sought authority to employ the “armed forces of the United States to secure and protect the territorial integrity and political independence of such nations, requesting such aid, against overt armed aggression from any nation controlled by International Communism.” The President emphasized that such authority would not be utilized by him “except at the desire of the nation attacked.”¹⁹ In response, the Congress passed legislation, enacted on March 9, 1957, that, among other things, authorized the President “to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance.” The joint resolution further provided that “if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided*, that such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.” The President was also to report to Congress on his action under the joint resolution between January and July of each year. The joint resolution further provided that it would expire when the President determined that the “peace and security of the nations in the general area of the Middle East” was “reasonably assured” or should Congress terminate it earlier by passage of a concurrent resolution.²⁰

¹⁹Public Papers of the Presidents of the United States. Dwight D. Eisenhower. 1957, Washington. U.S. Government Printing Office, 1958, pp. 6, 11-15.

²⁰P.L. 85-7, 71 Stat. 5 March 9, 1957 [H.J. Res. 117]. The Senate committee (the Foreign Relations and Armed Services committees meeting jointly) noted that in considering the legislation various strongly held views had been “vigorously expressed” regarding the constitutional powers of the President and of the Congress, as well as the proper constitutional procedure to be followed in the situation contemplated by the legislation. The final legislative language adopted reflected this debate. This language had, the Senate joint committee said, “the virtue of remaining silent on the question of the relationship between the Congress and the President with respect to the use of the Armed Forces for the objectives stated in the resolution.” The Senate committee also argued that although there was sharp division as to the “proper constitutional processes” to follow in support of the President’s request, there was none regarding the substantive policy involved. The Senate committee stated that “the clear statement of policy in section 2 of the resolution as reported is preferable to a blanket authorization to the President to use the Armed Forces in this area.” U.S. Congress. Senate. Committees on Foreign Relations and Armed Services, 85th Congress, 1st session, Senate report 70, February 14, 1957, [to accompany S.J. Res. 19], pp. 1, 8-9. The text of the Senate bill was adopted by the Congress in lieu of that of the House bill. The Senate passed the joint resolution, H.J. Res. 117, as amended, by a vote of 72-19 on March 5, 1957; the House passed H.J. Res. 117 with the Senate amendments by a vote of 350-60 on March 7, 1957. The joint resolution was signed on March 9, 1957.

Southeast Asia 1964

In the early 1960s, the United States had been providing military assistance and support to the government of South Vietnam. Over time tensions, associated with the U.S. military presence in Southeast Asia and support for the South Vietnamese government, grew between the U.S. and the communist government of North Vietnam. On August 2, 1964, a U.S. destroyer, the U.S.S. Maddox, while in international waters off the coast of North Vietnam (the Gulf of Tonkin) was attacked by North Vietnamese torpedo boats. The attack was repulsed. The State Department protested to the North Vietnamese government and noted that grave consequences would follow additional offensive actions against U.S. forces. Subsequently, on August 4, further attacks by North Vietnamese vessels against U.S. destroyers were reported to Washington. President Lyndon Johnson responded on August 4, by sending U.S. military aircraft to bomb “gunboats and certain supporting facilities” in North Vietnam that had been used in the actions against U.S. naval vessels. After meeting with Congressional leaders, President Johnson on August 5, 1964, formally requested a resolution of Congress that would “express the support of the Congress for all necessary action to protect our armed forces and to assist nations covered by the SEATO Treaty.”²¹

Congress responded to President Johnson’s request by passing a joint resolution to “promote the maintenance of international peace and security in southeast Asia.” This legislation has come to be popularly known as the “Gulf of Tonkin resolution.” This joint resolution, enacted on August 10, 1964, stated that “the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.” The joint resolution further stated that: “Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.” The joint resolution stated that it would expire whenever the President determined that the “peace and security of the area is reasonably assured” or if Congress chose to terminate it earlier by concurrent resolution.²²

Lebanon 1983

On July 6, 1982, President Ronald Reagan announced he would send a small contingent of U.S. troops to participate in a multinational force for temporary peacekeeping in Lebanon. When the forces began to land on August 25, President Reagan reported this action to Congress but did not cite section 4(a)(1) of the War

²¹Public Papers of the Presidents of the United States. Lyndon B. Johnson. 1963-64, Washington. U.S. Government Printing Office, 1965, pp. 927, 930-932.

²²P.L. 88-408, 78 Stat. 384, August 10, 1964 [H.J. Res. 1145]. The House passed H.J. Res. 1145 on August 7, 1964 by a vote of 414-0; the Senate passed it on August 7, 1964 by a vote of 88-2. This joint resolution was later repealed in 1971 by P.L. 91-672, § 12, 84 Stat. 2053 (1971).

Powers Resolution, and said the agreement with Lebanon ruled out any combat responsibilities. After overseeing the departure of the Palestine Liberation Organization force, the U.S. Marines in the first Multinational Force left Lebanon on September 10, 1982. The second dispatch of Marines to Lebanon began on September 20, 1982. President Reagan announced that the United States, France, and Italy had agreed to form a new multinational force to return to Lebanon for a limited period of time to help maintain order until the lawful authorities in Lebanon could discharge those duties. The action followed three events that took place after the withdrawal of the first group of U.S. Marines: the assassination of Lebanon President-elect Bashir Gemayel, the entry of Israeli forces into West Beirut, and the massacre of Palestinian civilians by Lebanese Christian militiamen.

On September 29, 1982, President Reagan submitted a report to Congress that 1,200 Marines had begun to arrive in Beirut, but again he did not cite section 4(a)(1), of the War Powers Resolution, stating that the American force would not engage in combat. As a result of incidents in which U.S. Marines were killed or wounded, there was controversy in Congress on whether the President's report should have been filed under section 4(a)(1). In mid-1983 Congress passed the Lebanon Emergency Assistance Act of 1983 requiring statutory authorization for any substantial expansion in the number or role of U.S. Armed Forces in Lebanon. It also included a section that stated:

Nothing in this section is intended to modify, limit, or suspend any of the standards and procedures prescribed by the War Powers Resolution of 1973.²³

President Reagan reported on the Lebanon situation again on August 30, 1983, still not citing section 4(a)(1), after fighting broke out between various factions in Lebanon and two Marines were killed. The level of fighting heightened, and as the Marine casualties increased and the action enlarged, there were more calls in Congress for invocation of the War Powers Resolution. Several Members of Congress said the situation had changed since the President's first report and introduced legislation that took various approaches. Senator Charles Mathias introduced S.J. Res. 159 stating that the time limit specified in the War Powers Resolution had begun on August 31, 1983, and authorizing the forces to remain in Lebanon for a period of 120 days after the expiration of the 60-day period. Representative Thomas Downey introduced H. J. Res. 348 directing the President to report under section 4(a)(1) of the War Powers Resolution. Senator Robert Byrd introduced S.J. Res. 163 finding that section 4(a)(1) of the War Powers Resolution applied to the present circumstances in Lebanon. The House Appropriations Committee approved an amendment to the continuing resolution for fiscal year 1984 (H.J. Res. 367), sponsored by Representative Clarence Long, providing that after 60 days, funds could not be "obligated or expended for peacekeeping activities in Lebanon by United States Armed Forces," unless the President had submitted a report under section 4(a)(1) of the War Powers Resolution. A similar amendment was later rejected by the full body, but it reminded the Administration of possible congressional actions.

²³P.L. 98-43, 97 Stat. 214, June 27, 1983 [S.639]

On September 20, 1983, congressional leaders and President Reagan agreed on a compromise resolution invoking section 4(a)(1) of the War Powers Resolution and authorizing the Marines to remain for 18 months. The Multinational Force in Lebanon Resolution became the first legislation to be handled under the expedited procedures of the War Powers Resolution. On September 28 the House passed H.J. Res. 364 by a vote of 270 to 161. On September 29 the Senate passed S.J. Res. 159 by a vote of 54 to 46. The House accepted the Senate bill by a vote of 253 to 156 later the same day. The President signed the joint resolution into law on October 12, 1983. As passed, the joint resolution contained four occurrences that would terminate the authorization before eighteen months: (1) the withdrawal of all foreign forces from Lebanon, unless the President certified continued U.S. participation was required to accomplish specified purposes; (2) the assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force; (3) the implementation of other effective security arrangements; or (4) the withdrawal of all other countries from participation in the Multinational Force. Congress also determined in the joint resolution that the requirements of section 4(a)(1) of the War Powers Resolution became operative on August 29, 1983.²⁴

In a statement made on signing S.J. Res. 159 on October 12, 1983, President Reagan expressed appreciation for the support for U.S. presence and policies in Lebanon he believed were embodied in the legislation. He sharply differed, however, with various “findings, determinations, and assertions” by the Congress on certain matters. He stated his concerns about the practical problems associated with section 4(a)(1) of the War Powers Resolution, and the wisdom and constitutionality of section 5(b). President Reagan noted that it was important for him to state that in signing the Lebanon resolution

that I do not and cannot cede any of the authority vested in me under the Constitution as President and as Commander in Chief of United States Armed Forces. Nor should my signing be viewed as any acknowledgment that the President’s constitutional authority can be impermissibly infringed by statute, that congressional authorization would be required if and when the period specified in section 5(b) of the War Powers Resolution might be deemed to have been triggered and the period had expired, or that section 6 of the Multinational Force in Lebanon Resolution may be interpreted to revise the constitutional authority to deploy United States Armed Forces.²⁵

Iraq 1991

On August 2, 1990, Iraqi troops under the direction of President Saddam Hussein invaded Kuwait, seized its oil fields, installed a new government in Kuwait

²⁴P.L. 98-119, 97 Stat. 805, October 12, 1983 [S.J.Res. 159]

²⁵Public Papers of the Presidents of the United States. Ronald Reagan. 1983, Washington. U.S. Government Printing Office, 1985, pp.1444-1445. Shortly afterward, on October 23, 1983, 241 U.S. Marines in Lebanon were killed by a suicide truck bombing, raising fresh questions in Congress and U.S. public opinion about U.S. participation in the Lebanon peacekeeping endeavor. On February 7, 1984, President Reagan announced the Marines would be redeployed and on, March 30, 1984, reported to Congress that U.S. participation in the Multinational Force in Lebanon had ended.

City, and moved toward the border with Saudi Arabia. A week after the invasion, on August 9, President George H.W. Bush reported to Congress “consistent with the War Powers Resolution” that he had deployed U.S. armed forces to the region prepared to take action with others to deter Iraqi aggression. He noted that he did not believe involvement in hostilities was imminent. Throughout the rest of 1990, President Bush continued to work to establish an international coalition opposed to Iraq’s aggression, while continuing to deploy additional U.S. military reinforcements into Saudi Arabia and the Persian Gulf region. By the end of the year approximately 350,000 U.S. forces had been deployed to the area.²⁶

As the prospect of a war without congressional authorization increased, on November 20, 1990, Representative Ron Dellums and 44 other Democratic Members of Congress sought a judicial order enjoining the President from offensive military operations in connection with Operation Desert Shield unless he consulted with and obtained an authorization from Congress. On December 13, Judge Harold Greene of the Federal district court in Washington denied the injunction, holding that the controversy was not ripe for judicial resolution because a majority of Congress had not sought relief and the executive branch had not shown sufficient commitment to a definitive course of action.²⁷

By January 1991, President Bush had secured the support of the United Nations and an international coalition to use force, if necessary, to free Kuwait from Iraqi occupation, as acknowledged in U.N. Resolution 678 of November 29, 1990. That resolution authorized all U.N. member states “to use all necessary means” to implement various U.N. resolutions seeking to end Iraqi occupation of Kuwait. It set a January 15, 1991 deadline for Iraq to implement fully all relevant U.N. resolutions relating to its invasion of Kuwait. On January 8, 1991, President George H.W. Bush, in a letter to the congressional leaders, requested a congressional resolution supporting the use of all necessary means to implement U.N. Security Council Resolution 678. He stated that he was “determined to do whatever is necessary to protect America’s security” and that he could “think of no better way than for Congress to express its support for the President at this critical time.” It is noteworthy that the President’s request for a resolution was a request for congressional “support” for his undertaking in the Persian Gulf, not for “authority” to engage in the military operation. In a press conference on January 9, 1991, President Bush reinforced this distinction in response to questions about the use of force resolution being debated in Congress. He was asked whether he thought he needed the resolution, and if he lost on it would he feel bound by that decision. President Bush in response stated: “I don’t think I need it...I feel that I have the authority to fully implement the United Nations

²⁶For an overview of Congressional actions during the Fall and Winter of 1990 as well as the President’s actions in response to the events in the Persian Gulf see: *The War Powers Resolution: After Twenty-Five Years*. CRS Report for Congress RL30308, by Richard F. Grimmett, pp.24-26.

²⁷*Dellums v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990).

resolutions.” He added that he felt that he had “the constitutional authority—many attorneys having so advised me.”²⁸

On January 12, 1991, both houses passed the “Authorization for Use of Military Force Against Iraq Resolution.” Section 2(a) of that joint resolution authorized the President to use U.S. Armed Forces pursuant to U.N. Security Council Resolution 678 to achieve implementation of the earlier Security Council resolutions. Section 2(b) required that first the President would have to report that the United States had used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with the Security Council resolution and that those efforts had not been successful. Section 2(c) stated that it was intended to constitute specific statutory authorization within the meaning of Section 5(b) of the War Powers Resolution. Section 3 required the President to report every 60 days on efforts to obtain compliance of Iraq with the U.N. Security Council resolution.²⁹

In his statement made when signing H.J. Res. 77 into law, President Bush said the following: “As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President’s constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution.” He added that he was pleased that “differences on these issues between the President and many in the Congress have not prevented us from uniting in a common objective.”³⁰ On January 16, 1991, President Bush made the determination required by P.L. 102-1 that diplomatic means had not and would not compel Iraq to withdraw from Kuwait. On January 18, he reported to Congress “*consistent with the War Powers Resolution*” that he had directed U.S. forces to commence combat operations on January 16.³¹

²⁸Public Papers of the Presidents of the United States. George Bush 1991. Washington, U.S. Government Printing Office, 1992, pp. 13-14, 19-20.

²⁹The House passed H.J.Res. 77 by a vote of 250 to 183. The Senate passed S.J.Res. 2 and then accepted the language in H.J.Res. 77. The Senate vote was 52 to 47. P.L. 102-1, 5 Stat. 3, January 14, 1991 [H.J.Res. 77]. On January 12, to emphasize the congressional power to declare war, the House also adopted by a vote of 302 to 131 H.Con.Res. 32 expressing the sense that Congress must approve any offensive military actions against Iraq; the Senate did not act on the measure.

³⁰Public Papers of the Presidents of the United States. George Bush 1991. Washington, U.S. Government Printing Office, 1992, p. 40. Subsequently, on June 20, 1992, President Bush reiterated his view of his constitutional authority during remarks to the Texas State Republican Convention in Dallas, Texas. On that occasion President Bush said: “Some people say, why can’t you bring the same kind of purpose and success to the domestic scene as you did in Desert Shield and Desert Storm? And the answer is: I didn’t have to get permission from some old goat in the United States Congress to kick Saddam Hussein out of Kuwait. That’s the reason.” Public Papers of the Presidents of the United States. George Bush 1992-93. Washington, U.S. Government Printing Office, 1993, p. 995.

³¹Public Papers of the Presidents of the United States. George Bush 1991. Washington, U.S. Government Printing Office, 1992, p. 42, 52. Emphasis added.

Terrorist Attacks against the United States (World Trade Center and the Pentagon) 2001

On September 11, 2001, terrorists hijacked four U.S. commercial airliners, crashing two into the twin towers of the World Trade Center in New York City, and another into the Pentagon building in Arlington, Virginia. The fourth plane crashed in Shanksville, Pennsylvania near Pittsburgh, after passengers struggled with the hijackers for control of the aircraft. The death toll from these incidents was in the thousands, with precise totals yet to be determined. President George W. Bush characterized these attacks as more than acts of terror. “They were acts of war,” he said. He added that “freedom and democracy are under attack,” and he asserted that the United States would use “all of our resources to conquer this enemy.”³²

In the days immediately after the September 11 attacks, the President consulted with the leaders of Congress on appropriate steps to take to deal with the situation confronting the United States. One of the things that emerged from discussions with the White House and Congressional leaders was the concept of a joint resolution of the Congress authorizing the President to take military steps to deal with the parties responsible for the attacks on the United States. Between September 13 and 14, draft language of such a resolution was discussed and negotiated by the President’s representatives and the House and Senate leadership of both parties. Other members of both Houses suggested language for consideration. On Friday, September 14, 2001, the text of a joint resolution was introduced. It was first considered and passed by the Senate in the morning of September 14, as Senate Joint Resolution 23, by a vote of 98-0. The House of Representatives passed it later that evening, by a vote of 420-1, after tabling an identical resolution, H.J.Res. 64, and rejecting a motion to recommit by Rep. John Tierney that would have had the effect, if passed and enacted, of requiring a report from the President on his actions under the resolution every 60 days.³³

Senate Joint Resolution 23, titled the “Authorization for Use of Military Force,” passed by Congress on September 14, 2001, was signed into law on September 18, 2001.³⁴ The 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.

³²Presidential statement of September 12, 2001. Office of the White House Press Secretary. See White House website at <http://whitehouse.gov/news/releases>.

³³For background on discussions regarding the resolution see: Washington Post, September 13, 2001, p.A3; CQ Daily Monitor, September 13, 2001, p.2, 6; CQ Daily Monitor, September 14, 2001, p.2; Washington Post, September 14, 2001, p. A30; The New York Times, September 14, 2001, p.A19; Roll Call, September 20, 2001, p.17. The debate on S. J. Res. 23 is found in U.S. Congress. Congressional Record, 107th Congress, 1st session, pp.S9416-S9421 (Senate); H5638-H5683 [daily edition].

³⁴P.L. 107-40 (September 18, 2001); 115 Stat. 224.

The joint resolution further states that Congress declares that this resolution is intended to “constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.” Finally, the joint resolution also states that “[n]othing in this resolution supercedes any requirement of the War Powers Resolution.”

A notable feature of S.J.Res. 23 is that unlike all other major legislation authorizing the use of military force by the President, this joint resolution authorizes military force against “organizations and persons” linked to the September 11, 2001 attacks on the United States. Past authorizations of the use of force have permitted action against unnamed nations in specific regions of the world or against named individual nations. This authorization of military action against “organizations or persons” is unprecedented in American history, with the scope of its reach yet to be determined. The authorization of use of force against unnamed nations is more consistent with some previous instances where authority was given to act against unnamed states as appropriate when they became aggressors or took military action against the United States or its citizens.

President George W. Bush in signing S.J. Res. on September 18, 2001, noted the Congress had acted “wisely, decisively, and in the finest traditions of our country.” He thanked the “leadership of both Houses for their role in expeditiously passing this historic joint resolution.” He noted that he had had the “benefit of meaningful consultations with members of the Congress” since the September 11 attacks and that he would “continue to consult closely with them as our Nation responds to this threat to our peace and security.” President Bush also asserted that S.J.Res. 23 “recognized the authority of the President under the Constitution to take action to deter and prevent acts of terrorism against the United States.” He also stated: “In signing this resolution, I maintain the longstanding position of the executive branch regarding the President’s constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution.”³⁵

Implications Under International Law

Peace and war are forms of relations between states. Thus, peace has been defined as

a condition in which States maintain order and justice, solve their problems by cooperation, and eliminate violence. It is a condition in which States respect each other’s sovereignty and equality, refrain from intervention and the threat or use of force and cooperate with one another in accordance with the treaties which they have concluded.³⁶

³⁵Statement of the President on September 18, 2001. President Signs Authorization for Use of Military Force bill. Office of the White House Press Secretary. September 18, 2001. See White House website at <http://whitehouse.gov/news/releases>.

³⁶Skubiszewski, Krzysztof, “Peace and War,” *Encyclopedia of Public International Law*, Vol (continued...)

War, in contrast, is “a condition of armed hostility between States,”³⁷ “a contention, through the use of armed force, between states, undertaken for the purpose of overpowering another.”³⁸ It terminates or suspends the laws and customs that prevail in peacetime and substitutes for them the laws of war (such as the Hague Conventions and the Geneva Conventions). Under international law war between states sanctions the killing of the enemy, seizure or destruction of the enemy’s property, the internment of enemy aliens, and other measures designed to subdue the enemy and impose the will of the triumphant state.

A declaration of war, in and of itself, has the effect of creating a state of war and changing the relationship between the states involved from one of peace to one of war. That is the case even if no hostilities have actually occurred. Under international law a declaration of war is not a necessary prerequisite to the existence of a state of war.³⁹ But it does “create[] the legal status of war ... [and give] evidence that peace has been transmuted into war, and that the law of war has replaced the law of peace.”⁴⁰

Not every armed conflict, however, is a war. For a conflict to be deemed a war in the legal sense, at least one of the parties to the conflict must intend that it constitute a war. In the absence of such an intent, an armed conflict does not necessarily terminate or suspend the laws and customs that prevail in peacetime. For that reason an authorization for the use of force does not appear to be the equivalent to a declaration of war under international law.

Scholars sometimes debate whether war as a legal concept has survived the widespread adoption of the Charter of the United Nations. The Charter states as one

³⁶(...continued)

4 (1982), at 74-75.

³⁷Hyde, Charles Cheney, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. 3 (1945), at 1686.

³⁸von Glahn, Gerhard, *Law Among Nations* (6th ed.) (1992), at 669.

³⁹Although the requirement was often ignored in practice, prior to the 20th century a declaration of war was widely thought to be a legal prerequisite to the existence of a state of war between two or more countries. Even the Hague Convention (III) Relative to the Opening of Hostilities, negotiated in 1907 and ratified by 42 countries (including the U.S.) required that formal notice of a declaration of war be given to the enemy prior to the beginning of hostilities, as follows:

The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

Although this treaty remains in effect for its Parties, its requirement is rarely, if ever, observed; and a declaration generally is no longer regarded as a legal prerequisite to the existence of a state of war.

⁴⁰Eagleton, Clyde, “The Form and Function of the Declaration of War,” 38 *American Journal of International Law* 19, 21 (1938).

of its purposes “to save succeeding generations from the scourge of war,” and it requires its Members “to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”⁴¹ Moreover, it provides for a system of collective security under the Security Council to maintain or restore international peace and security.⁴² However, the Charter also recognizes a right of self-defense apart from the actions of the Security Council. Article 51 provides that

[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security

Moreover, the existence of the United Nations has not wholly prevented states from engaging in armed conflict. Thus, the legal consequences of a state of war or of an armed conflict would still seem to be of importance.

Finally, it should be noted that U.S. declarations of war and authorizations for the use of force, except the authorization signed into law on September 18, 2001, have all been directed against particular states or to protect particular regions from armed attack. To the extent that the terrorist attacks of September 11 are linked to a state (such as Afghanistan) and U.S. military action is against such a state, the international legal consequences detailed below likely apply. But to the extent the authorization is for the use of force against organizations and individuals, it appears to be unique and may not have these consequences.

The following subsections discuss the implications under international law of a declaration of war and of an authorization for the use of force with respect to diplomatic relations, treaties, the laws of war, and war crimes.

Diplomatic Relations

Customarily, the outbreak of war causes the termination of diplomatic relations. If the circumstances of an armed conflict have not previously caused such a discontinuance, a declaration of war apparently does so. Whether an authorization for the use of force necessarily has the same automatic consequence is not entirely clear. The Vienna Convention on Diplomatic Relations⁴³ does not specifically address the effect of a declaration of war or of an authorization for the use of force but does require that diplomatic privileges and immunities not cease until the diplomat leaves the country and that the receiving state assist diplomats and their families in leaving “at the earliest possible moment, ... even in case of armed conflict.”⁴⁴ The Convention also requires that a state respect and protect the premises of a diplomatic mission and its property and archives during any time in which diplomatic relations

⁴¹UN Charter, 59 Stat. 1031, Preamble and Article 2(4).

⁴²*Id.* Ch. VII.

⁴³23 UST 3227 (1972).

⁴⁴*Id.*, Articles 38 and 44.

have been broken, including “in the case of armed conflict.”⁴⁵ These protections appear to apply regardless of whether a state has adopted a declaration of war or an authorization for the use of force. In the current circumstance the United States does not now have diplomatic relations with Afghanistan.

Treaties

At one time it was thought that treaties automatically terminated upon the outbreak of war or the issuance of a declaration of war. But that is no longer the case.⁴⁶ Some treaties, such as those concerning the laws of war, come into full effect in wartime; others concerning such matters as boundaries are deemed to remain in effect; and treaties of a more political nature are deemed either to remain in effect or to be terminated or suspended on a case-by-case basis. To a great degree the issue of what treaties (other than treaties pertaining to the rules of warfare and boundaries) remain in effect appears to be a political issue for the belligerent parties to decide, although the modern tendency appears to be to deem treaties as remaining in effect to the greatest extent possible. The legal effect of an authorization for the use of force would seem to be no different. These consequences, of course, assume that the armed conflict is between or among states.

Laws of War

As noted above, war is a form of relationship between or among states that sanctions the use of armed force. The laws of war are attempts to regulate the nature of the weapons and tactics used in waging war and to protect persons (and nations) not directly involved in the conflict. Since the end of the 19th century a number of treaties have been concluded imposing a variety of restrictions on the weapons and tactics which belligerents can use in war not only against combatants but with respect to civilians. The Hague Conventions,⁴⁷ for instance, variously mandate that hostilities cannot begin without a declaration of war or the delivery of an ultimatum containing a conditional declaration of war and that it is unlawful to employ poison or poisoned weapons, “to kill or wound treacherously,” to destroy or seize the enemy’s property except as “imperatively demanded by the necessities of war,” or to bombard “buildings dedicated to religion, art, science, or charitable purposes.” The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and

⁴⁵*Id.* Article 45(a).

⁴⁶*See generally*, von Glahn, Gerhard, *Law Among Nations* (1992), at 715-716.

⁴⁷The Hague Convention Respecting the Laws and Customs of War on Land, 32 Stat. 1803 (1902); the Hague Convention (III) Relative to the Opening of Hostilities, 36 Stat. 2259 (1910); the Hague Convention (IV) Respecting the Laws and Customs of War on Land, 36 Stat. 2277 (1910); the Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 36 Stat. 2310 (1910); the Hague Convention (VII) Relative to the Laying of Automatic Submarine Contact Mines, 36 Stat. 2332 (1910); the Hague Convention (IX) Concerning Bombardment by Naval Forces in Time of War, 36 Stat. 2351 (1910); the Hague Convention (XI) Relative to Certain Restrictions With Regard to the Exercise of the Right of Capture in Naval War, 36 Stat. 2396 (1910); and the Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War, 36 Stat. 2415 (1910). The United States, it might be noted, is a Party to all of these conventions.

of Bacteriological Methods of Warfare⁴⁸ bars the use of poisonous gases and bacteria as weapons of war. The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques⁴⁹ does not wholly bar the use of environmental modification techniques but does so only to the extent they have “longlasting or severe effects.” The Geneva Conventions⁵⁰ impose a variety of standards and regulations governing the treatment by an enemy of the sick and wounded, prisoners of war, and civilian populations in occupied territories. The U.S. is a Party to all of these conventions. But the rules of warfare laid down in these conventions are deemed in many respects to have already been, or to have since become, a matter of customary international law and thus, to that extent, are binding on all belligerents regardless of whether all of them are Parties to a particular convention.⁵¹

Thus, the applicability of these standards and rules does not appear to be affected by the adoption of either a declaration of war or an authorization for the use of force. They appear to apply to the circumstance of armed conflict.

War Crimes

Adoption of a declaration of war or of an authorization for the use of force also does not appear to have significant consequences with respect to war crimes. The Geneva Conventions, for instance, apply in their totality to “all cases of declared war *or of any other armed conflict* which may arise between two or more of the contracting Parties, even if the state of war is not recognized by one of them”⁵² (emphasis added). Moreover, as noted above, the various conventions that attempt to regulate the means of waging war apply to the circumstance of war.

Implications Under Domestic Law

Both declarations of war and authorizations for the use of force have consequences under domestic law as well as international law. Both, for instance, have the effect of expanding Presidential discretion in the use of the armed forces under the War Powers Resolution. Perhaps more significantly, a declaration of war also has the effect of bringing into force a number of standby statutory authorities that

⁴⁸26 UST 571 (1975).

⁴⁹31 UST 333 (1980).

⁵⁰Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 UST 3114 (1956); Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 6 UST 3217 (1956); Convention (III) Relative to the Treatment of Prisoners of War, 6 UST 3316 (1956); and Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 UST 3516 (1956).

⁵¹Some requirements, however, such as the one regarding the issuance of a declaration of war or an ultimatum prior to commencing hostilities, appear to have fallen into desuetude.

⁵²Geneva Conventions, Common Art. 2.

confer powers on the President and other members of the Executive Branch that they may not otherwise exercise, an effect that an authorization for the use of force does not appear to have unless and until it leads to the existence of a state of war. A declaration of war or a determination that a state of war exists may also bring into effect certain exclusionary clauses in insurance contracts as well as a number of provisions of criminal law. These consequences may be further expanded if, as is common, a declaration of war or authorization for the use of force is accompanied by a Presidential proclamation of a national emergency. Such a proclamation has the effect of making potentially available numerous additional standby statutory authorities to the President and the Executive Branch.

A subsequent section of this report attempts to itemize many, if not all, of the standby statutory authorities that can be triggered by a proclamation of national emergency, a state of war, and/or a declaration of war. But some of the more salient domestic legal effects of a declaration of war and an authorization for the use of force are as follows:

The War Powers Resolution

Both a declaration of war and an authorization for the use of force have significant implications with respect to the War Powers Resolution (WPR).⁵³ The WPR was enacted over President Nixon's veto in 1973 to restore a Congressional role in the use of force that was thought by many to have been lost in the Cold War and the Vietnam War. To that end the WPR mandates that the President consult with the Congress "in every possible instance" prior to introducing U.S. armed forces into hostilities and regularly afterwards and to report to Congress on a regular basis if hostilities persist. Section 4(a) of the WPR further requires the President, "in the absence of a declaration of war," to report to Congress within 48 hours in any case in which United States Armed Forces are introduced —

- (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
- (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or
- (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation.

Section 5(b) of the Resolution, in turn, requires that if a report has been submitted or was required to be submitted under § 4(a)(1) above, the President shall terminate the involvement of U.S. forces unless Congress

- (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces;
- (2) has extended by law such sixty-day period, or

⁵³50 U.S.C.A. § 1541 *et seq.*

(3) is physically unable to meet as a result of an armed attack upon the United States.⁵⁴

Thus, congressional enactment of a declaration of war or an authorization for the use of force pursuant to § 5(b) has the effect of tolling the 60-90 day withdrawal mandate of the WPR.

On September 18, 2001, President Bush signed into law a joint resolution passed by Congress four days earlier that has that effect. The statute authorizes him

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.

The resolution gives the President full discretion to determine who planned and participated in the terrorist attack of September 11 and what nations harbored the terrorist organizations or persons that did so; and it gives him full discretion to determine what force is “necessary and appropriate” to use against such nations, organizations, and persons. The joint resolution also specifies that it constitutes “specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.” Thus, the President appears to be authorized, if he deems it “necessary and appropriate,” to commit U.S. forces to combat without time limit.

The joint resolution further specifies that “[n]othing in this resolution supercedes any requirement of the War Powers Resolution.” That appears to mean that the consultation and reporting requirements of the WPR still apply.

Trading with the Enemy Act and the International Emergency Economic Powers Act

Two related statutes, the Trading With the Enemy Act⁵⁵ (TWEA) and the International Emergency Economic Powers Act⁵⁶ (IEEPA), grant the President extraordinary powers to control foreign-owned property and foreign trade transactions with designated countries under certain exceptional circumstances. TWEA comes into effect upon a declaration of war or the existence of a state of war, while IEEPA is triggered solely by a presidential declaration of national emergency. Neither statute is triggered by an authorization for the use of force. The powers conferred by TWEA are broader than those conferred by IEEPA, one significant difference being that title to foreign assets in the U.S. which have been frozen under TWEA may be vested in the U.S. Government but not those frozen under IEEPA.

⁵⁴*Id.*, § 1544(b).

⁵⁵50 U.S.C. App. §§ 1 *et seq.*

⁵⁶50 U.S.C. §§ 1701 *et seq.*

Until 1977 the broad range of economic authorities granted by TWEA could be exercised both in times of war and in times of national emergency. However, in 1977 Congress limited the prospective application of TWEA to times of declared or undeclared war only and enacted IEEPA to apply during times of a national emergency declared by the President. Under TWEA the President may

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States⁵⁷

IEEPA retains many of TWEA's powers to regulate international transactions,⁵⁸ but it excludes certain others. In addition to omitting the TWEA power to vest title to assets, IEEPA also does not include TWEA authorities relative to purely domestic transactions, the regulation of bullion, and seizure of records.⁵⁹ As noted, IEEPA is triggered solely by a declaration of national emergency, while TWEA applies in time of war. Thus, TWEA is not dependent upon a declaration of war, but it can be triggered by such a declaration. It does not appear to be triggered by an authorization for the use of force, unless and until a state of war actually develops.

IEEPA is the authority most commonly invoked to freeze or block the assets of foreign states, companies, or individuals located within the jurisdiction of the United States. President Bush made use of this authority in issuing Executive Order 13224 on September 23, 2001, freezing the property of designated individuals and entities deemed to be connected to terrorism.⁶⁰

⁵⁷50 U.S.C.A. Appx. § 5(b).

⁵⁸50 U.S.C.A. § 1702.

⁵⁹Staff of the House Ways and Means Committee, 105th Cong., *Overview and Compilation of U.S. Trade Statutes*, ch. 5 (WMCP 105-4, 1997).

⁶⁰66 Fed. Reg. 49079 (September 25, 2001).

Alien Enemy Act

First enacted in 1798, the Alien Enemy Act⁶¹ broadly authorizes the President to deport, detain, or otherwise condition the stay of alien enemies in the U.S. in cases of “declared war” or “any invasion or predatory incursion ... perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government ...” The Act implements the internationally recognized right of every nation to protect itself during times of war from individuals whose primary allegiance lies with a hostile foreign power. Given this premise, the Supreme Court has observed that “[e]xecutive power over enemy aliens, undelayed and unhampered by litigation, has been deemed, throughout our history, essential to war-time security.”⁶²

The President must publicly proclaim the event that gives rise to activation of the Act. But once he does so, his power to “apprehend, restrain, secure, and remove” enemy aliens extends to all “natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be in the United States and not actually naturalized.”⁶³ The President may intern or remove enemy aliens or set lesser restraints on them, and may adopt any “regulations which are found necessary in the premises and for the public safety.”⁶⁴ Thus, President Woodrow Wilson, for example, restricted the ability of alien enemies during World War I to possess firearms and explosives, to come within a half a mile of a military facility or munitions factory, to reside in certain areas, to possess certain communications equipment, or to publish certain types of materials. President Roosevelt authorized similar restrictions during World War II and, additionally, set up over 100 community hearing boards to make internment recommendations to the Attorney General.⁶⁵ President Roosevelt also, of course, ordered thousands of Japanese-Americans interned.

The procedural rights of aliens who are subject to the Alien Enemy Act are drastically restricted compared with those that aliens otherwise enjoy, including hearing rights under the removal provisions of the Immigration and Nationality Act.⁶⁶ The scope of judicial review is equally circumscribed.⁶⁷ Among the few rights recognized under the Act, alien enemies subjected to removal may, if not chargeable with “actual hostility” or other crime against public safety, be entitled to the time

⁶¹50 U.S.C. §§ 21 *et seq.*

⁶²*Johnson v. Eisentrager*, 339 U.S. 763, 774 (1950).

⁶³50 U.S.C. § 21.

⁶⁴*Id.*

⁶⁵See J. Gregory Sindak, War, Liberty, and Enemy Aliens, 67 *N.Y.U.L. Rev.* 1402, 1412-1419 (1992).

⁶⁶8 U.S.C. §§ 1101 *et seq.* See, e.g., 8 U.S.C. § 240.

⁶⁷See *Ludecke v. Watkins*, 335 U.S. 160 (1948) (“The very nature of the President’s power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion.”).

allowed by applicable treaty or order to wind up his or her affairs here.⁶⁸ A very limited right to judicial review under a petition for a writ of habeas corpus also is recognized. Generally, however, the power of the President to control alien enemies under the Act is extraordinary.

The Act does not appear to be triggered solely by an authorization for the use of force.

Criminal Law

There are a number of civilian federal criminal law provisions that apply explicitly to specified conduct in time of war. They do not appear to distinguish between circumstances involving a declaration of war and other situations in which a state of war may otherwise exist. While it would seem that a declaration of war would trigger these statutes, they may also apply in other circumstances where a state of war is deemed to exist. Thus, they do not appear to be triggered by an authorization for the use of force, unless a state of war develops. These include, for example:⁶⁹

(a) 18 U.S.C.A. § 443 (willful secreting, mutilating, obliterating or destroying records of a war contractor, that is, a holder of a prime or subcontract connected with or related to the prosecution of a war);

(b) 18 U.S.C.A. § 757 (procuring the escape of a prisoner of war held by the United States or any of its allies or the escape of an apprehended or interned enemy alien held by the United States or its allies; aiding or assisting such escape or assisting the prisoner of war or enemy alien after his escape; or attempting or conspiring to do any of the above);

(c) 18 U.S.C.A. § 792 (harboring or concealing persons known or believed to have committed or to be about to commit an offense under 18 U.S.C. §§ 793 or 794);

(d) 18 U.S.C.A. § 793 (gathering, transmitting or losing information related to the national defense with the intent or reason to believe that it is to be used to the injury of the United States or to the benefit of a foreign nation. Includes, among other things, such actions with respect to information on any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being prepared, repaired, stored, or are the subject of research or development; or with respect to any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared, constructed, or stored);

(e) 18 U.S.C.A. § 794 (gathering or delivering information relating to the national defense with the intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation. Subsection (b) deals with recording, publishing, or communicating or attempting to elicit information regarding movements, numbers, condition or disposition of Armed Forces, ships,

⁶⁸50 U.S.C.A. § 22.

⁶⁹This list is intended to provide examples, rather than to be exhaustive.

aircraft or war materials, with the intent that the information be communicated to the enemy in time of war. It also covers communicating to the enemy in time of war information on plans or conduct of naval or military operations or defense measures.)⁷⁰

(f) 18 U.S.C.A. § 1091 (genocide in time of peace or in time of war);

(g) 18 U.S.C.A. § 1653 (aliens who are found and taken on the sea making war against the United States or engaging in piracy against U.S. vessels or property);

(h) 18 U.S.C.A. § 2153 (when the United States is at war or when a national emergency has been declared, willful destruction of war material, war premises, or war utilities, with intent or reason to believe that such actions may injure, interfere with, or obstruct the United States or associate nations in their war or defense activities; and conspiracy to do so);

(i) 18 U.S.C.A. § 2154 (in times of war or national emergency, willfully producing defective war material, war premises, or war utilities with intent to injure, interfere with, or obstruct the war or defense activities of the United States or associate nations);

(j) 18 U.S.C.A. § 2381 and U.S. Constitution, Art. 3, Sec. 3, Cl. 1 (while owing allegiance to the United States, levying war against the United States or adhering to its enemies, giving them aid and comfort. Constitution requires confession in open court or testimony of two witnesses to the same overt act to convict for treason);

(k) 18 U.S.C.A. § 2382 (misprision of treason);

(l) 18 U.S.C.A. § 2384 (seditious conspiracy to overthrow or destroy by force the Government of the United States or to levy war against the United States);

(m) 18 U.S.C.A. § 2388 (willfully engaging in certain activities in time of war with intent to adversely affect armed forces of the United States or to obstruct enlistment or recruitment; conspiracy to do so; harboring a person knowing or having reason to believe that the person has engaged in such conduct);

(n) 18 U.S.C.A. § 2389 (recruiting soldiers or sailors within U.S. jurisdiction to engage in armed hostilities against the United States); and

(o) 18 U.S.C.A. § 2441 (war crimes).

⁷⁰It should be noted that other espionage provisions in 18 U.S.C.A. §§ 793-799 do not explicitly require a state or time of war to apply, but would presumably apply in wartime as well as peacetime. Unlawful communication of, receipt of, tampering with, or disclosure of restricted data with respect to special nuclear material is addressed in 42 U.S.C.A. §§ 2274-77. Here again, wartime is not distinguished from other times in the application of these provisions.

It should also be noted that other federal and state criminal law provisions,⁷¹ which do not draw distinctions between conduct in time of war and at other times, also apply during wartime.⁷² For example, 18 U.S.C.A. § 175 prohibits knowing development, stockpiling, acquisition, possession or retention of any biological agent, toxin, or delivery system for use as a weapon, or knowing assistance to a foreign state to do so. 18 U.S.C.A. § 229, with certain exceptions, prohibits similar conduct with respect to chemical weapons. 18 U.S.C.A. § 831 prohibits specific transactions or actions involving nuclear materials, while 42 U.S.C.A. § 2284 deals with sabotage of nuclear facilities or fuel. 18 U.S.C.A. § 2332a prohibits certain uses of weapons of mass destruction. Other explosives offenses are covered in 18 U.S.C.A. § 844. Hostage-taking is addressed in 18 U.S.C. § 1203, while kidnaping is covered by 18 U.S.C.A. § 1201. 18 U.S.C.A. § 1116 deals with murder or manslaughter of foreign officials, official guests, or internationally protected persons. 18 U.S.C.A. § 1114 addresses the murder or attempted murder of federal officers and employees, including members of the uniformed services, while they are engaged in or on account of the performance of official duties. It also covers murder or attempted murder of any person assisting an officer or employee of the United States in the performance of those duties or on account of that assistance.⁷³

There are also criminal law provisions applicable to the military in the Uniform Code of Military Justice, 10 U.S.C.A. §§ 841 *et seq.* Some of these provisions apply specifically in times of war. These will be treated separately in the subsequent section of this report on “Military Personnel.”⁷⁴

⁷¹The provisions noted in this paragraph are intended as examples, rather than as an exhaustive list.

⁷²There are also a number of provisions in 18 U.S.C.A. §§ 958-67 which may be triggered by conduct during wars involving other nations with whom the United States is at peace or during wars in which the United States is neutral. These deal, for example, with: enlisting in the service of a foreign government to serve in war against a nation with whom the United States is at peace; taking part in or facilitating a military or naval expedition against a friendly nation; strengthening the armed vessel of a foreign nation which is at war with a nation with whom the United States is at peace; arming a vessel to be used against a friendly nation; authorizing the taking out or attempting to take out of a U.S. port a detained vessel of a belligerent nation; delivering an armed vessel to a belligerent nation in a conflict in which the United States is neutral; or authorizing the taking out or attempting to take out of a U.S. port a vessel the departure of which has been prohibited in aid of neutrality.

⁷³Some of these statutes are among a number of federal statutes which implicitly or explicitly have extraterritorial application. This raises a question as to whether or to what extent the existence of a state of open hostilities or a declaration of war would affect the availability of extraterritorial application of such provisions. Time constraints do not permit an exploration of this issue in this report. For a general discussion of extraterritorial application of federal criminal law, including appendices addressing federal criminal laws which enjoy express extraterritorial application and federal crimes subject to federal prosecution when committed overseas, see *Extraterritorial Application of American Criminal Law*, CRS Report 94-166 S, by Charles Doyle (last updated on March 13, 1999).

⁷⁴ Moreover, by operation of the Military Extraterritorial Jurisdiction Act of 2000, 18 U.S.C.A. 3261-3267, contractors and other civilians who accompany American armed forces overseas are subject to federal prosecution for the commission of various common law crimes

Foreign Intelligence Surveillance and Physical Searches in Time of War

Under 50 U.S.C.A. §§ 1801 *et seq.*, foreign intelligence surveillance is authorized under specified circumstances and using specific procedures. Foreign intelligence physical searches are addressed in 50 U.S.C. §§ 1821 *et seq.* However, 50 U.S.C.A. § 1811 provides that,

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

Similarly, 50 U.S.C.A. § 1829 states that:

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

Finally, 50 U.S.C.A. 1844 provides that:

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

None of these provisions appears to be triggered by an authorization for the use of force.

Assassination

As noted in the foregoing discussion of criminal law, 18 U.S.C.A. § 1116 makes it a crime to kill or attempt to kill a 'foreign official, official guest, or internationally protected person.' The term "foreign official" includes, among others, a Chief of State or the political equivalent thereof while he or she is in the United States. "Internationally protected person" covers, among others, a Chief of State or the political equivalent thereof, whenever such person is in a country other than his or her own. This criminal provision does not apply to the killing or attempted killing of an internationally protected person in his or her own country. The United States courts may exercise jurisdiction over the killing or attempted killing of internationally protected persons in violation of 18 U.S.C. § 1116 committed outside the United States where the victim is a representative, officer, employee or agent of the United States; where a perpetrator is a U.S. national; or where an offender is later found in the United States.

⁷⁴(...continued)

such as murder (18 U.S.C.A. 1111), rape (18 U.S.C.A. 2241), assault (18 U.S.C.A. 113), kidnaping (18 U.S.C.A. 1201), and the like.

In addition, Part 2.11 of Executive Order 12333 forbids any person employed by or acting on behalf of the United States Government from engaging in, or conspiring to engage in, assassination. Part 2.12 of that executive order further prohibits any agency of the Intelligence Community from participating in or requesting any person to undertake activities forbidden by the order. The executive order does not define "assassination," nor does either the criminal statute or the executive order specifically address the applicability of the prohibition to an armed conflict in which the U.S. is engaged. However, in times of war, the targeting of an enemy's command and control structures may be regarded as strategically important and is lawful under international law. Depending upon the how broadly the term "assassination" in E.O. 12333 is interpreted, it may not be deemed to cover such acts of war. Further, if a Chief of State or political equivalent were to be killed in his or her own country in times of war, such a killing would not appear to be covered by 18 U.S.C. § 1116, because of the place where the event occurred. Consequently, it may be contended that killing or attempting to kill a Chief of State or other foreign official as part of an act of war targeting an enemy's command and control structures may not be unlawful under federal criminal law or the executive order. Hence, a declaration of war, because it creates a state of war regardless of whether actual hostilities have occurred, arguably creates a situation where such an act is not prohibited by domestic law. Less clear is the effect of an authorization for the use of force. Once a state of war comes into existence following such an authorization, then the legal situation appears to be the same as with a declaration. But prior to that development, the legal effect of an authorization for the use of force on the assassination ban appears somewhat ambiguous.

An executive order may be revoked by the President through another executive order. To the extent that an executive order is issued pursuant to authority granted by statute, Congress may repeal it or terminate the underlying statutory authority upon which it rests. The assassination ban is part of an executive order issued by President Reagan in 1981 under both statutory and constitutional authority. There is no explicit indication in the order as to the foundation upon which President Reagan stood in issuing the assassination ban in particular. If one were to argue that it was founded on statutory authority, then one might contend that an authorization for a use of force might, by implication, modify the ban or repeal to the extent that it applied to the context with respect to which such use of force was authorized.

The Defense Production Act of 1950

Conversely, declarations of war or authorizations for the use of force do **not** appear to have any particular consequences for the broad authorities conferred by the Defense Production Act of 1950 (DPA), as amended.⁷⁵ The DPA was first enacted in 1950 to mobilize the nation's productive capacity after the outbreak of the Korean War. It currently plays a key role in enabling the United States to maintain a national defense/military readiness capability that will support a rapid and effective response to any threat to U.S. national security, including "an attack on the United States." The DPA has been reauthorized and amended a number of times, most recently in 2000. The original 1950 act contained seven titles, four of which were rescinded in

⁷⁵50 U.S.C.A. App. §§ 2061 *et seq.*

1953.⁷⁶ Currently, three titles of the DPA are in effect, and they are due to expire on September 30, 2001, unless renewed. The authorities contained in the act are not triggered by any particular event but are continuously available “to ensure the national defense preparedness, which is essential to national security”⁷⁷

Title I (Priorities and Allocations). This title⁷⁸ provides the President with the authority to require the priority performance of defense contracts and to allocate scarce critical and strategic materials essential to the national defense. This authority may also be extended to support the military requirements of allied nations when such extension is in the U.S. national defense interest. Priority contract performance, especially as implemented with respect to industrial resources, is intended to ensure sources of supply and timely delivery of required items for defense purposes.⁷⁹

The post-Cold War use of this authority includes the 1990-1991 operations in the Persian Gulf (Desert Shield/Storm). During this operation, such items as computer and communications equipment, Global Positioning System receivers, chemical warfare protective clothing, and medical supplies were urgently required by both U.S. and Allied nation forces. More recently, DPA authority has been used to ensure timely delivery of critically needed items to support the deployment of U.S. and NATO troops in Bosnia and nearby areas.

Title I contains a section that prohibits the President from exercising his priorities and allocations authority unless he makes certain findings supporting the need for such action. Additional sections provide the President with authority relating to the hoarding of designated materials, penalties for the violation of any provision of Title I, small business preferences, *etc.*

Title III (Expansion of Productive Capacity and Supply). This title⁸⁰ is used only in cases where domestic sources are required and domestic firms cannot, or will not, act on their own to meet a national defense production need. Because private firms may be reluctant to invest in production capabilities for a new material unless a near-term demand for the material is relatively certain, Title III authorizes the use of financial incentives to expand defense-related productive capacity and supply. These financial incentives include loan guarantees, direct federal loans, purchases, purchase guarantees, and installation of equipment in contractor facilities.

⁷⁶Titles II, IV, V, and VI pertained to Korean War-era economic stabilization measures (controlling prices, wages, credit, etc.).

⁷⁷50 U.S.C.A. App. 2062.

⁷⁸*Id.* §§ 2071-2078.

⁷⁹Similar authority to require the priority performance of defense contracts, including those for the Nuclear Regulatory Commission, if the President determines that “it is in the interest of national security” to do so, is conferred by 50 U.S.C.A. App. § 468. That statute also authorizes the President to take immediate possession of any plant, mine, or other facility that fails to honor such a priority requirement, including steel production facilities that fail to honor priority directives regarding the apportionment of steel to entities producing steel products or materials for the armed forces.

⁸⁰*Id.* §§ 2091-2099.

The authorities conferred in this title become broader in times of a national emergency declared by the President or Congress.

Title VII (General Provisions). This title⁸¹ includes various provisions with relevance to defense industrial preparedness. Examples include: (a) Section 708, which authorizes the President to provide antitrust defenses to private firms participating in voluntary agreements aimed at solving production and distribution problems involving national defense preparedness; (b) Section 710, which establishes a National Defense Executive Reserve (NDER) composed of recognized experts from various segments of the private sector and government (except full-time federal) employees for training for possible employment in the federal government in the event of an emergency; and (c) Section 721, a provision popularly known as the “Exon-Florio Amendment,” which authorizes the President to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if such action would threaten to impair national security.

Insurance Contracts

Another domestic legal consequence of declarations of war and authorizations for the use of force is their effect, if any, on insurance contracts, particularly with respect to clauses that exclude coverage for “acts of war.” The overwhelming characterization of the events of September 11 as an “act of war” by public officials, sovereigns, international organizations, and the media, for instance, seemingly could affect how the courts interpret so called “war risk” exclusion clauses in the pertinent insurance contracts. However, even a declaration of war by Congress does not appear to have an authoritative effect upon the construction of material terms contained in private contracts. The intent of the parties, not the description of Congress, is what is most relevant to understanding whether the events of September 11 are “acts of war” within the meaning of private contracts.⁸²

The material issue is whether the events of September 11, or other analogous events, were “proximately caused by an agency fairly described, for *insurance purposes*, by an exclusion clause” in the relevant policy.⁸³ In other words, a court will construe the “exclusions as the parties would reasonably have expected them to be construed.”⁸⁴ This is essentially a question of fact.⁸⁵ As a court is dealing with this

⁸¹*Id.*, §§ 2151- 2170.

⁸² Under New York law, insurance policies are to be interpreted in accordance with their terms. *See Continental Insurance Company v. Arkwright Mutual Insurance Company*, 102 F.3d 30 (2d Cir. 1996). *See also Shneiderman v. Metropolitan Casualty*, 14 A.D.2d 284 (N.Y. 1961) (holding that “an insurance policy is generally a contract with the average man who presumably is unfamiliar with the existence of a state of war from the strictly political, military and/or legal standpoint.”)

⁸³*See Holiday Inns Inc. v. Aetna Insurance Company*, 571 F. Supp. 1460, 1464 (S.D.N.Y. 1983) (holding that interpretation of insurance policies does not turn on how political leaders describe the events giving rise to a loss, but on how the policy describes the event), *quoting Spinney’s Ltd v. Royal Insurance Co., Ltd*, 1 Lloyd’s L. Rep 406 (Q.B.).

⁸⁴*Pan American World Airways, Incorporated v. Aetna Casualty and Surety Company*, 505 (continued...)

question, the characterization of events such as those of September 11 may inform it when it categorizes what “warlike” action means under a policy’s exclusion clause. Still, precedent suggests that characterizations of an event by public officials is not dispositive of the issue.⁸⁶

In the leading case in this area, *Pan American World Airways, Incorporated v. Aetna Casualty and Surety Company*,⁸⁷ a jet was hijacked and destroyed by political dissidents in the Middle East. “Notwithstanding the obvious political overtones of the event,” the court ruled that “the hijacking was too contained to come under the war or insurrection exclusion.”⁸⁸ A rule of causation and a rule of identity informed this conclusion. According to the *Pan Am* decision, when a court interprets an insurance policy excluding from coverage any injuries “caused by” a certain class of conditions, “the causation inquiry stops at the efficient physical cause of the loss; it does not trace events back to their metaphysical beginnings.”⁸⁹ In the *Pan Am* case, the court examined contract language excluding from coverage losses caused by a “military or usurped power” and stated that an act causing such a loss “must be at least that of a de facto government.”⁹⁰ On the facts of the case, the court then found that the terrorist organization that hijacked the Pan Am airplane “was not a de facto government in the sky over London when the 747 was taken”⁹¹ and held that the exclusion clause, therefore, did not apply.

With respect to claims arising out of the September 11 incident, a court following this rule may well examine the naked act of a plane crashing into a building, stripping the event of its political motivations and significance. The court will then likely ask whether this naked act is the sort of instrumentality properly categorized as an “act of war” for the purposes of the relevant war exclusion clause. This narrow inquiry into the cause underpinning the events of September 11 cuts against an argument attributing losses to property and life to an act of war, notwithstanding comments of public officials or legislative enactments to the contrary.

The identity and causation rules of *Pan Am* suggest that the losses to life and property on September 11 could not aptly be attributed to a “military or usurped power” for the purposes of triggering a “war risk” exclusion clause.

⁸⁴(...continued)

F.2d 989, 1003(1974)(applying New York law)

⁸⁵*Id.*

⁸⁶*Id.* See also *Holiday Inns Inc. v. Aetna Insurance Company*, supra, at 1464.

⁸⁷505 F.2d 989 (2nd Cir. 1974)

⁸⁸*Id.* at 1009. Jefferey W. Stempel, LAW OF INSURANCE CONTRACT DISPUTES § 1.02[a] (2001)

⁸⁹*Pan Am*, 505 F.2d at 1006. See also *Kimmins Indus. Service Corp. v. Reliance Ins. Co.*, 19 F.3d 78, 81 (2nd Cir. 1994), *Album Realty Co. v. American Home Assurance Co.*, 176 A.D.2d at 514, quoting *Home Insurance Co. v. American Insurance Co.*, 147 A.D.2d 353, 354 (1989).

⁹⁰*Pan Am*, 505 F.2d at 1006.

⁹¹*Id.*

Military Personnel

A number of provisions of the U.S. Code concern crimes under the Uniform Code of Military Justice, the activation of the reserves, the role of the Coast Guard, tax benefits for military personnel, and disability and death as the result of combat duty. None appear necessarily to require a declaration of war to be applicable, but a declaration can trigger their application.

Crimes under the UCMJ. Various crimes defined under the Uniform Code of Military Justice (*i.e.*, the UCMJ, set out at 10 U.S.C.A. §§ 801 *et seq.*) occur either primarily or exclusively in the context of states of hostilities (*e.g.*, “misbehavior before the enemy” under section 899; “subordinate compelling surrender” under section 900; “improper use of countersign” under section 901; “forcing a safeguard” under section 902; “aiding the enemy” under section 904; “misconduct as prisoner” under section 905; and rules concerning “spies” under section 906). Several of these crimes either only occur or occur in aggravated form “in time of war.” The Manual for Courts Martial sets out Rules for Court Martial. Rule 103(19) defines the expression “time of war,” as follows:

For purpose [*sic*] of ... implementing the applicable paragraphs of Parts IV and V of this Manual only, “time of war” means a period of war declared by Congress or the factual determination by the President that the existence of hostilities warrants a finding that a “time of war” exists for purposes of ... Parts IV and V of this manual.

Thus, a congressional declaration is not indispensable to prosecutions of these crimes but can trigger their application. They do not appear to be triggered by an authorization for the use of force unless a state of war develops.

Activation of Reserves. Chapter 1209 of title 10 of the United States Code (10 U.S.C.A. §§ 12301 *et seq.*) relates generally to activation of reserve forces. The Ready Reserve forces include members of the Army National Guard and the Air National Guard (see 10 U.S.C.A. § 10145(b)). The authority conferred under sections 12302 through 12304 can be exercised without a congressional declaration of war or national emergency; but those sections only allow reserve forces to be called to active duty for fixed statutory periods (*i.e.*, up to 24 months under sections 12302 and 12303 and up to 270 days under section 12304). By contrast, the authority conferred under section 12301 can be exercised “[i]n time of war or of national emergency declared by Congress” and allows reserve forces to be called to active duty “for the duration of the war or national emergency and for six months thereafter.” The Standby Reserve (as distinguished from the Ready Reserve and Selected Reserve forces) can only be called to active service under the authority conferred by section 12301 (see section 12306). While the Retired Reserve can be called to active service for up to 12 months under 10 U.S.C.A. § 688, it can be called to service “for the duration” under the authority conferred by section 12301 (see section 12307). So-called “stop loss” authority is conferred under section 12305. This authority allows the President to “suspend any provision of law relating to promotion, retirement, or separation” with respect to persons called to active service under sections 12301, 12302, and 12304. This means that, when persons have been called to active service “for the duration” under the authority conferred by section 12301, otherwise applicable rules concerning promotions, retirements, and separations may not apply.

Thus, for all of these sections, a declaration of war is not a necessary predicate, but it can trigger the application of § 12301 and related provisions.

Coast Guard. Section 3 of title 14 of the United States Code specifies that “[u]pon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy” Thus, a congressional declaration of war is not indispensable to bring the Coast Guard under the control of the Navy, but it could have that effect.

Tax Provisions. There are several provisions of the Internal Revenue Code which apply to taxpayers involved directly or indirectly with war. A congressional declaration of war is not needed to render any of these provisions applicable.

Perhaps the most significant relevant provision of the Internal Revenue Code is section 112 under which some or all of the pay received by members of the uniformed services for active service in a combat zone is excluded from gross income (*i.e.*, is received tax-free). The term “combat zone” is specially defined for purposes of this rule and means an area so designated by the President of the United States in an Executive Order, and such an Executive Order must be issued to make the tax exemption apply. No reference is made in this provision to any declaration by Congress of the existence of a state of war and, by its express terms, it applied to service in the Korean and Vietnam conflicts.

The pay of POWs and those listed as “missing in action” is also exempt (see IRC § 112(d)).

In addition, pay received tax-free because of IRC § 112 is exempt from federal income-tax withholding under IRC § 3401(a)(1). Due dates for filing returns and for paying taxes, according to IRC § 7508, are deferred for members of the uniformed services serving in a combat zone designated by the President for purposes of IRC § 112. Telephone calls originating from combat zones designated under IRC § 112 are exempt from the federal excise tax that would otherwise apply (see IRC § 4253(d)). The so-called “additional estate tax” does not apply in the case of the estate of a member of the Armed Forces who is killed in action in a combat zone designated under IRC § 112 or who dies as a result of wounds, disease, or injury suffered in such a combat zone (see IRC § 2201).

An exemption from federal income tax for the current taxable year and the preceding taxable year is allowed under IRC § 692 for a member of the Armed Forces who dies in a combat zone designated under IRC § 112 or who dies as a result of wounds, disease, or injury suffered in such a combat zone, and such an exemption is also allowed in the case of a civilian federal employer killed in any military action involving the United States (see IRC § 692).

Special rules for spouses of persons who become missing in action also appear in the Code (see IRC §§ 2(a)(3) and 6013).

Disability and Death. Subchapter II of chapter 11 of title 38 of the United States Code (38 U.S.C. §§ 1110 *et seq.*) relates to “wartime disability compensation.” Relevant disability must result from personal injury suffered or disease contracted in the line of duty in active military, naval, or air service “during a period of war.”

Thus, there is no explicit requirement of a congressional declaration of war. On the other hand, such a declaration would obviously assure that the particular period of hostilities in question is indeed a period of war.

Chapter 13 of title 38 of the United States Code (38 U.S.C.A. §§ 1301 *et seq.*) relates to service-connected deaths. Compensation in connection with such deaths is accorded without regard to whether or not they occurred during or as a result of a war declared by Congress.

Rules under 38 U.S.C.A. § 2402 relating to the eligibility of members of the Armed Forces who die while on active duty to be buried in national cemeteries (including Arlington National Cemetery) and other rules concerning burial benefits are not contingent on a congressional declaration of war.

Itemization of Standby Statutory Authorities

Under ordinary circumstances the President exercises the powers conferred on him by the Constitution and by statutes enacted by Congress. As can be seen in the preceding sections, in extraordinary circumstances a number of additional statutory powers may become available, and his Constitutional powers are likely to be given a generous interpretation by the courts. The statutory authorities potentially available to the President and the Executive Branch number in the hundreds. Some are triggered by a declaration of war and some by the existence of a state or time or period of war. The greatest number appear to be triggered by a declaration or existence of national emergency. None of these special authorities appears to be triggered by an authorization for the use of force (unless and until it leads to a state of war). With respect to those statutes that are triggered by the existence of a national emergency or state or time of war, the determination of whether such a condition exists is made in the first instance by the executive branch.

On September 14, 2001, President Bush took the first step in activating some of these emergency statutory authorities by issuing a “Declaration of National Emergency by Reason of Certain Terrorist Attacks.”⁹² But a declaration alone is not sufficient to bring the standby authorities that depend on a declaration of national emergency into effect. National emergency powers can be exercised only pursuant to the strictures of the National Emergencies Act.⁹³ In addition to requiring that the President publicly declare a national emergency, that Act requires that he specify the emergency statutory authorities that he intends to use prior to their use and that he publish that information in the *Federal Register* and report it to Congress.⁹⁴ Moreover, the Act provides that Congress can terminate a declared emergency at any

⁹²Proclamation 7463 (Sept. 14, 2001); 66 Fed. Reg. 48199 (Sept. 18, 2001).

⁹³50 U.S.C.A. § 1601 *et seq.*

⁹⁴*Id.* §§ 1621 and 1631.

time by joint resolution and that, in any event, the emergency declaration expires after one year unless the President specifically renews it.⁹⁵

The following subsections identify the standby authorities available to the President and the executive branch upon (1) a declaration or state of national emergency, (2) the existence of a state of war, and (3) a declaration of war.⁹⁶ Many of these authorities may be triggered by more than one of the cited bases, *i.e.*, they may be triggered not only by a declaration of a national emergency but also by a time or state of war and/or a declaration of war. Consequently, the first subsection below identifies all of the authorities that can be triggered by a declaration or state of national emergency, including those that can also be triggered by a time or state of war and/or a declaration of war. The second subsection, in turn, identifies those that can be triggered by a state of war, including those that can also be triggered by a declaration of war but excluding those that are triggered by a declaration of national emergency. The third subsection identifies those that are triggered by a declaration of war to the exclusion of the other two bases. The lists exclude the statutes detailed above concerning criminal law and taxes as well as the disaster relief authorities contained in the “Robert T. Stafford Disaster Relief and Emergency Assistance Act.”⁹⁷

(1) Statutory Authorities Triggered by Declaration or Existence of National Emergency

As noted, the largest number of special authorities potentially come into effect upon the declaration of a national emergency or the existence of a state of national emergency. These special authorities, listed in the order in which they appear in the U.S. Code Annotated, include the following:

Federal employees.

(1) 5 U.S.C.A. § 3326 – allows retired members of the armed forces to be appointed to civil service positions in the Department of Defense for 180 days after their retirement if “a state of national emergency exists.”

(2) 5 U.S.C.A. § 5303 – allows the President, “because of national emergency or serious economic conditions affecting the general welfare,” to alter the annual adjustment in pay schedules that would otherwise be effective.

(3) 5 U.S.C.A. § 5304a – allows the President, “because of national emergency or serious economic conditions affecting the general welfare,” to alter the locality-based comparability pay increases that would otherwise be effective.

⁹⁵*Id.* § 1622.

⁹⁶These lists are based on several LEXIS searches using the search terms “national w/2 emergency,” “state or time w/2 war,” and “declaration w/2 war,” and is current through P.L. 107-36 (August 29, 2001). The results of those searches were also compared to, and supplemented by, a study done under contract for the Office of Mobilization Preparedness in the Federal Emergency Management Agency in 1992 by the System Planning Corporation -- *Emergency Executive Authorities* (Contract EMW-91-C-3644).

⁹⁷42 U.S.C.A. 5121 *et seq.*

(4) 5 U.S.C.A. § 5335(b) – requires that step increases mandated for federal civil service employees be preserved for those employees who serve in the armed forces or “essential non-Government civilian employment during a period of war or national emergency.”

(5) 5 U.S.C.A. § 5343(e)(3) – requires that step increases mandated for federal prevailing rate employees be preserved for those employees who serve in the armed forces or “in essential non-Government civilian employment during a period of war or national emergency.”

(6) 5 U.S.C.A. § 6323(d)(1) (West Supp. 2001) – allows up to 44 days of leave for a military reserve technician who is ordered to active duty except “during a war or national emergency declared by the President or Congress.”

(7) 5 U.S.C.A. § 8332(g) – provides that a civil service employee who leaves his civilian position to serve in the military “during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress” is deemed not to be separated from his civil service position for purposes of determining his or her creditable service for retirement purposes, unless the military service extends beyond 5 years.

Agriculture.

(8) 7 U.S.C.A. § 1332 – requires the Secretary of Agriculture to increase or terminate a national marketing quota for wheat in case of “a national emergency or ... a material increase in the demand for wheat.” (Note: This authority is suspended from 1996 to 2002. *See* 7 U.S.C.A. 7301(a).)

(9) 7 U.S.C.A. § 1371(b) – requires the Secretary of Agriculture to increase or terminate a national marketing quota or acreage allotment for cotton, rice, peanuts, or tobacco if necessary to meet “a national emergency or ... a material increase in export demand.”

(10) 7 U.S.C.A. § 1444(e)(4) – allows the Secretary of Agriculture to require a set-aside of cropland if he determines that the “total supply of agricultural commodities will, in the absence of such a set-aside, be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.”

(11) 7 U.S.C.A. § 1444(h)(5)(A)(1) – allows the Secretary of Agriculture to limit the acreage planted to extra long staple cotton if he determines that the “total supply of extra long staple cotton, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency.”

(12) 7 U.S.C.A. § 1736y(3) – declares it to be the policy of the United States that the export of agricultural commodities and products should not be prohibited or limited except “in time of a national emergency declared by the President under the Export Administration Act (50 App. U.S.C.A. 2401 *et seq.*).

(13) 7 U.S.C.A. § 1743(a)(6) – allows the Commodity Credit Corporation to dispose of commodity set-asides “in accordance with the directions of the President ... to meet any national emergency declared by the President.”

(14) 7 U.S.C.A. § 4208(b) – provides that the policies stated in the “Farmland Protection Policy Act (7 U.S.C.A. 4201-4208) do not apply “to the acquisition or use of farmland for national defense purposes during a national emergency.”

(15) 7 U.S.C.A. § 5712(c) – allows the President to prohibit or curtail the export of any agricultural commodity “during a period for which the President has declared a national emergency or for which the Congress has declared war.”

Immigration.

(16) 8 U.S.C.A. § 1182(a)(7) – provides that any person “who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency” is ineligible to receive a visa and inadmissible into the United States.

(17) 8 U.S.C.A. § 1182(a)(8) – makes ineligible for citizenship any immigrant “who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency.”

Armed forces.

(18) 10 U.S.C.A. § 123 – authorizes 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 ... in time of war, or of a national emergency declared by Congress or the President” until one year after the war or national emergency terminates.

(19) 10 U.S.C.A. § 123a – authorizes the President to defer any end-strength limitation prescribed by law for any military or civilian component of the armed forces if “there is in effect a war or national emergency.”

(19) 10 U.S.C.A. § 123b – provides that the President may waive the ceiling placed on the number of members of the armed forces who may be stationed abroad in any fiscal year “if the President declares an emergency” and that the ceiling “does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.”

(20) 10 U.S.C.A. § 155(f)(4) – lifts the four-year limitation on the tours of duty of officers assigned or detailed to duty on the Joint Staff of the Joint Chiefs of Staff “in time of war; or during a national emergency declared by the President or Congress.”

(21) 10 U.S.C.A. § 194(e) – lifts the caps on the number of armed forces and civilian employees that can be assigned or detailed to permanent duty in management headquarters activities or otherwise in the Defense Agencies and DOD Field Activities “in time of war; or during a national emergency declared by the President or Congress.”

(22) 10 U.S.C.A. § 519 –provides that “in time of war or of national emergency declared by Congress” enlistments in the armed forces shall be for the duration of the war or emergency plus six months.

(23) 10 U.S.C.A. § 527 – allows the President to suspend the limitations placed on the number of general officers in the Army, Air Force, and Marines and of flag officers in the Navy, and the number of such officers who may be designated in various ranks, “in time of war, or of national emergency declared by Congress or the President” until up to one year after the war or national emergency terminates.

(24) 10 U.S.C.A. § 603(a) – allows the President to appoint “any qualified person” to any officer grade in the Army, Navy, Air Force, and Marines up to major general or rear admiral “in time of war, or of national emergency declared by the Congress or the President” for up to 2 years or 6 months after the war or national emergency has terminated, whichever occurs first.

(25) 10 U.S.C.A. § 620 (d) – allows the Secretary of a military department to exclude a reserve officer ordered to active duty “during a war or national emergency” from the active duty roster of officers.

(26) 10 U.S.C.A. § 671 – provides that basic training may not be less than 12 weeks “in time of war or a national emergency declared by Congress or the President.”

(27) 10 U.S.C.A. § 688(f) – waives the 12-month limitation on the period for which retired members of the armed forces can be recalled to active duty and the prohibition on recalling certain categories of retired officers to active duty “in time of war or of national emergency declared by Congress or the President.”

(28) 10 U.S.C.A. § 690(c) -- waives the limitation on the number of retired general officers and flag officers who may be on active duty at any one time “in time of war or of national emergency declared by Congress or the President.”

(29) 10 U.S.C.A. § 708(d) – allows the Secretary of a military department to cancel a leave of absence granted for educational purposes “in time of war or of national emergency declared by Congress or the President.”

(30) 10 U.S.C.A. § 712 – allows the President to detail members of the armed forces to any foreign country he deems advisable to assist in military matters “during a war or a declared national emergency.”

(31) 10 U.S.C.A. § 721 – waives the limitation on the percentage of officers who can be assigned for up to six months to positions external to their armed force “during any period of war or of national emergency declared by Congress or the President.”

(32) 10 U.S.C.A. § 871 – allows the Secretary of a military department to commute a court-martial sentence of dismissal to a reduction in grade “in time of war or national emergency.”

(33) 10 U.S.C.A. § 978(e) – allows the President to suspend the requirement that persons seeking to enlist in the armed forces be tested for drug and alcohol use

and dependency “in time of war, or time of emergency declared by Congress or the President.”

(34) 10 U.S.C.A. § 1104(d) – provides that members of the armed forces on active duty “during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict” may receive health-care services from the Department of Veterans Affairs.

(35) 10 U.S.C.A. §§ 1201(b) and 1203(b) – provides that the Secretary of a military department may allow a member of his armed force to retire on disability even though the disability is more than 30 percent under the standard schedule of rating disabilities used by the Department of Veterans Affairs if the disability was incurred “in line of duty in time of war or national emergency.”

(36) 10 U.S.C.A. § 1491(e) – allows the Secretary of Defense to waive the requirement that a funeral honors detail be provided for the funeral of any veteran if “necessary ... to meet the requirements of war, national emergency, or a contingency operation or other military requirements.”

(37) 10 U.S.C.A. § 1580 (West Supp. 2001) – allows the Secretary of Defense or of the military department concerned to designate any employee of DOD as an emergency essential employee if they provide immediate support to combat operations in a combat zone “in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.”

(38) 10 U.S.C.A. § 2208 – allows the Secretary of Defense to waive the requirement that Congress be given written notification of the advance billing of a customer of a working-capital fund “during a period of war or national emergency.”

(39) 10 U.S.C.A. § 2304 – allows the Secretaries of the military departments and the Department of Transportation as well as the Administrator of NASA to exclude a particular source from a competitive procurement procedure or to solicit bids only from particular sources when it would be in the interest of national defense in having a facility, producer, manufacturer, or other supplier “available for furnishing the property or service in case of a national emergency or industrial mobilization.”

(40) 10 U.S.C.A. § 2350j(e)(3)(A) (West Supp. 2001) – allows the Secretary of Defense to carry out a military construction project financed by contributions from designated countries or regional organizations without prior explanation and justification to Congress if the project is necessary to support the armed forces “by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act that is in force at the time of the commencement of the project.”

(41) 10 U.S.C.A. § 2460(h) (West Supp. 2001) – provides that the conditions and prerequisites to the privatization of a DOD commercial or industrial type function do “not apply during war or during a period of national emergency declared by the President or Congress.”

(42) 10 U.S.C.A. § 2632 – allows the Secretary of a military department to provide transportation for employees working in a private plant that is manufacturing material for that department “during a war or a national emergency declared by Congress or the President.”

(43) 10 U.S.C.A. § 2662(g) (West Supp. 2001) – provides that the congressional notice and wait provisions governing certain real property transactions by the Secretary of a military department and by the GSA for the Department of Defense do not apply, *inter alia*, if the transaction results from “a declaration of war ... or a declaration of a national emergency by the President pursuant to the National Emergencies Act.”

(44) 10 U.S.C.A. § 2808(a) – provides that the Secretary of Defense and the Secretaries of the military departments, with his authorization, may undertake military construction projects “without regard to any other provision of law” if necessary to support the use of the armed forces “in the event of a declaration of war or the declaration by the President of a national emergency under the National Emergencies Act that requires use of the armed forces.”

(45) 10 U.S.C.A. § 3014(f)(4) – provides that the ceilings on the number of members of the armed forces, civilians, officers, and general officers that may be assigned or detailed for duty in the Office of the Secretary of the Army and on the Army Staff “do not apply in time of war or during a national emergency declared by the President or Congress.”

(46) 10 U.S.C.A. § 3033(a)(1) – allows the President to reappoint a Chief of Staff of the Army for an additional term of four years “in time of war or during a national emergency declared by Congress.”

(47) 10 U.S.C.A. § 3063(b) – allows the Secretary of the Army to discontinue or consolidate the basic branches of the Army designated by statute “for the duration of any war, or of any national emergency declared by Congress.”

(48) 10 U.S.C.A. § 4025 – prescribes that “during a national emergency declared by the President” the regular working hours of laborers producing military supplies or munitions for the Army are 8 hours a day and 40 hours a week, but allows these limits to be exceeded under regulations prescribed by the Secretary of the Army.

(49) 10 U.S.C.A. § 5014(f)(4) – provides that the ceilings on the number of members of the armed forces, civilians, officers, and general and flag officers that may be assigned or detailed for duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters Marine Corps “do not apply in time of war or during a national emergency declared by the President or Congress.”

(50) 10 U.S.C.A. § 5033 – allows the President to reappoint a Chief of Naval Operations for an additional term of four years “in time of war or during a national emergency declared by Congress.”

(51) 10 U.S.C.A. § 5043 – allows the President to reappoint a Commandant of the Marine Corps for an additional term of four years “in time of war or national emergency declared by Congress.”

(52) 10 U.S.C.A. § 5450 – provides that the limitation to ten on the number of retired flag officers who may be on active duty at any one time in the Regular Navy does not apply “in time of war or national emergency.”

(53) 10 U.S.C.A. § 6485 – provides that members of the Fleet Reserve and Fleet Marine Corps Reserve may be ordered to active duty “in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter, (and) in time of national emergency declared by the President”

(54) 10 U.S.C.A. § 6486 – provides that the Secretary of the Navy may not release a member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty “in time of war or national emergency declared by Congress or by the President” unless certain conditions are met.

(55) 10 U.S.C.A. § 6911(b) – provides that “except in time of war or emergency declared by Congress,” 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(56) 10 U.S.C.A. § 7224 – authorizes the Secretary of the Navy to designate persons who can be transported and subsisted on naval vessels at government expense “in time of war or during a national emergency declared by the President.”

(57) 10 U.S.C.A. § 8014(f)(4) – provides that the ceilings on the number of members of the armed forces, civilians, officers, and general officers that can be assigned or detailed for duty in the Office of the Secretary of the Air Force do not apply “in time of war or during a national emergency declared by the President or Congress.”

(58) 10 U.S.C.A. § 8033(a)(1) – allows the President to reappoint the Chief of Staff of the Air Force for an additional term of four years “in time of war or during a national emergency declared by Congress.”

(59) 10 U.S.C.A. § 8257(d) – provides that, “except in time of war or of emergency declared by Congress,” at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified

(60) 10 U.S.C.A. § 9025 – provides that “during a national emergency declared by the President” the working hours of laborers and mechanics employed by the Department of the Air Force are 8 hours a day and 40 hours a week but allows the Secretary of the Air Force to alter these hours by regulation.

Reserves.

(61) 10 U.S.C.A. § 10102 – states the purpose of the reserves to be “to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require.”

(62) 10 U.S.C.A. § 12006 – allows the President, “in time of war, or of national emergency,” to suspend the statutory ceilings placed on the number of reserve commissioned officers, reserve general officers, and rear admirals in the

Army, Navy, Air Force, and Marine Corps reserves for up to one year beyond the end of the war or national emergency, notwithstanding the earlier termination date prescribed by the National Emergencies Act.

(63) 10 U.S.C.A. § 12103 – extends enlistments in the reserves that are in effect “at the beginning of a war or of a national emergency declared by Congress,” or that are entered into during such a war or emergency, and that would otherwise expire, until six months after the war or emergency has ended, unless earlier terminated by the Secretary concerned.

(64) 10 U.S.C.A. § 12243 – allows the President to suspend any law relating to the promotion or mandatory retirement or separation of permanent reserve warrant officers “in time of war, or of emergency declared after May 29, 1954, by Congress or the President.”

(65) 10 U.S.C.A. § 12301 – allows the Secretary of a military department, “in time of war or of national emergency declared by Congress, or when otherwise authorized by law,” to order any reserve unit or member to active duty without their consent for the duration of the war or emergency and up to six months thereafter, and allows reserves on inactive or retired status to be called up if those on active status or in the inactive National Guard are insufficient.

(66) 10 U.S.C.A. § 12302 – allows the Secretary of a military department, “in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law,” to order any member or unit of the Ready Reserve to active duty without their consent for up to 24 months.

(67) 10 U.S.C.A. § 12311 – provides that if an agreement between the Secretary and a member of the reserves specifying a set term of active duty expires “during a war or during a national emergency declared by Congress or the President,” the Reserve may be kept on active duty without his consent.

(68) 10 U.S.C.A. § 12313 – limits the discretion of the Secretary concerned to release a Reserve from active duty “in time of war or of national emergency declared by Congress or the President”

(69) 10 U.S.C.A. § 12316 – provides that a Reserve who is called up “for a period of more than 30 days in time of war or national emergency” and who is otherwise entitled to a pension, retired or retainer pay, or disability compensation shall receive either that compensation, if it is greater, or the pay and allowances prescribed for the duty he is performing.

(70) 10 U.S.C.A. § 14317 – provides that reserve officers not on the active-duty list when ordered to active duty “in time of war or national emergency” may be considered for promotion by a mandatory or special selection board.

(71) 10 U.S.C.A. § 16201 – provides that the Secretary of each military department may provide financial assistance to persons in training for certain health care specialties in exchange for a commitment to subsequent service in the Ready Reserve, including the possibility of being ordered to active duty “in time of war or national emergency.”

(72) 10 U.S.C.A. § 18235 – bars the Secretary of Defense from disposing or allowing the use of facilities for the reserves in any manner that would interfere

with their use “in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.”

(73) 10 U.S.C.A. § 18236 – bars a state from disposing or allowing the use of facilities constructed for the reserves with the help of a federal grant in any manner that would interfere with their use “in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.”

Coast Guard.

(74) 14 U.S.C.A. § 275 – allows the President, “in time of war, or of national emergency declared by the President or Congress,” to suspend any section of this chapter with respect to the selection, promotion, or involuntary separation of Coast Guard officers and to promote to the next higher grade any officer serving on active duty in the grade of ensign or above and any warrant officer serving on active duty in a grade below chief warrant officer, until up to six months after the end of the war or national emergency.

(75) 14 U.S.C.A. § 331 – allows the Secretary to order any regular officer on the retired list to active duty “in time of war or national emergency.”

(76) 14 U.S.C.A. § 359 – allows the Commandant to order any enlisted member on the retired list to active duty “in times of war or national emergency.”

(77) 14 U.S.C.A. § 367 – allows an enlisted member of the Coast Guard to be detained beyond the term of his enlistment “during a period of war or national emergency as proclaimed by the President, and, in the interest of national defense,” for up to six months after the end of the war or emergency.

(78) 14 U.S.C.A. § 371 – requires that at least 20 percent of the aviation cadets procured in each fiscal year be qualified enlisted members of the Coast Guard, “except in time of war or national emergency.”

(79) 14 U.S.C.A. § 636 – allows commissioned and warrant officers of the Coast Guard to perform all of the functions of a notary public “in time of war or national emergency.”

(80) 14 U.S.C.A. § 652 – provides that legal changes lifting restrictions on the Navy “for the duration of a war or national emergency proclaimed by the President,” including those regarding procurement and personnel, shall automatically apply to the Coast Guard.

(81) 14 U.S.C.A. § 660(a) – allows the Secretary to provide transportation to and from work for persons employed by a private plant manufacturing material for the Coast Guard “during a war or during a national emergency declared by Congress or the President.”

(82) 14 U.S.C.A. § 722 – allows the President to suspend any part of the subchapter concerning commissioned officers in the Coast Guard Reserve “in time of war or national emergency declared by Congress.”

Small Business Administration.

(83) 15 U.S.C.A. § 636(n) (West Supp. 2001) – provides for the deferral of the repayment of interest and principal on direct loans by the SBA to a member of a reserve component who is ordered to active duty during a “period of military conflict,” defined to mean “a period of war declared by Congress [or] a period of national emergency declared by the Congress or the President”

Fort McHenry.

(84) 16 U.S.C.A. § 440 – allows Fort McHenry to be closed “in case of a national emergency” and to be used for military purposes “during the period of the emergency.”

(85) 16 U.S.C.A. § 824a(c) – allows the Federal Energy Regulatory Commission to order the temporary connection of electric energy facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest “during the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy, or of fuel or water for generating facilities, or other causes.”

Tennessee Valley Authority.

(86) 16 U.S.C.A. § 831d – directs the Tennessee Valley Authority to maintain a plant “for the production of explosives in the event of war or a national emergency” unless Congress releases it from the obligation.

(87) 16 U.S.C.A. § 831s – reserves to the government the right, “in case of war or national emergency,” to take control of the TVA “for the purpose of manufacturing explosives or for other war purposes.”

Imports.

(88) 19 U.S.C.A. § 1318 – allows the Secretary of the Treasury, “whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise,” to have additional time to perform any act prescribed by the Tariff Act of 1930, as amended, and to permit the import of food, clothing, and medical supplies for use in emergency relief work free of duty.

Barro Colorado Island.

(89) 20 U.S.C.A. § 79 – directs that Barro Colorado Island in Gatun Lake in the Canal Zone be left in its natural state for scientific observation and investigation “except in the event of declared national emergency.”

Foreign relations.

(90) 21 U.S.C.A. § 1901(a) – states as a Congressional finding that “[t]here is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.”

(91) 22 U.S.C.A. § 2318(a) – authorizes the President, if “an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization” to provide up to \$100 million in defense articles and services apart from the authority of the Arms Export Control Act but only upon notice to Congress.

(92) 22 U.S.C.A. § 4056(f) – deems that a member of the Foreign Service who has left the Service to enter military service “during a period of war, or national emergency proclaimed by the President or declared by the Congress” has not, for retirement benefit purposes, left the Service unless more than 5 years expire.

(93) 22 U.S.C.A. § 4103(c) – allows the President to suspend any statutory provision relating to labor-management relations in the Foreign Service “if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.”

Accounting and contracts.

(94) 31 U.S.C.A. § 3522(b)(3) – extends the time for the armed forces to submit account to the Comptroller General from the usual 60 days to 90 days “during a war or national emergency and for 18 months after the war or emergency ends.”

(95) 31 U.S.C.A. § 3727 – allows a contract with DOD, the General Services Administration, and the Department of Energy to provide, or to be changed without consideration to provide, that a future payment under a contract to an assignee is not subject to reduction or setoff “during a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law.”

National Guard.

(96) 32 U.S.C.A. § 104 – authorizes the President to detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard in order “to insure prompt mobilization of the National Guard in time of war or other emergency.”

(97) 32 U.S.C.A. § 111 – permits the President to suspend various statutory provisions relating to federal recognition of promotions in the Army and Air National Guard “in time of war, or of emergency declared by Congress.”

National Oceanic and Atmospheric Administration.

(98) 33 U.S.C.A. § 853i – allows the President, “in time of emergency declared by the President or by the Congress, and in time of war,” to suspend all or any part of the laws pertaining to the promotion of commissioned officers in the National Oceanic and Atmospheric Administration (NOAA).

(99) 33 U.S.C.A. § 854a-1 – provides that the laws that pertain to the temporary appointment or advancement of commissioned officers “in time of war or national emergency” in the Navy shall also apply to personnel in NOAA, subject to a few limitations.

(100) 33 U.S.C.A. § 855 – authorizes the President, “whenever in his judgment a sufficient national emergency exists,” to transfer such vessels, equipment, stations, and commissioned officers of NOAA to a military department “as he may deem in the best interests of the country.

Ocean dumping and civil works projects.

(101) 33 U.S.C.A. § 1902 (West Supp. 2001) – states that provisions applying pollution control standards derived from the MARPOL Protocol to warships, naval auxiliaries, and vessels owned by the United States, other than submersibles, shall not apply “during time of war or a declared national emergency.”

(102) 33 U.S.C.A. § 2293 (West Supp. 2001) – authorizes the Secretary of the Army, “in the event of a declaration of war or a declaration by the President of a national emergency in accordance with the National Emergencies Act that requires or may require use of the Armed Forces,” to terminate or defer Army civil works projects that he determines are not essential to the national defense and to apply the resources to projects that are essential.

(103) 33 U.S.C.A. § 2503 (West Supp. 2001) – lifts the prohibition on the ocean dumping of potentially infectious medical waste by public vessels “during time of war or a declared national emergency.”

Patents.

(104) 35 U.S.C.A. § 181 (West Supp. 2001) – provides that an order by the Commissioner of Patents that a patent or patent application be kept secret for national security reasons, which otherwise must be renewed each year, shall remain in effect “during a time when the United States is at war” and for one year following the cessation of hostilities and “during a national emergency declared by the President” and for six months thereafter.

Red Cross.

(105) 36 U.S.C.A. § 300104 (West Supp. 2001) – bars the election of members of the Board of Governors by proxy except “if the board believes a national emergency makes attendance at the national convention impossible.”

Coast Guard.

(106) 37 U.S.C.A. § 202 (West Supp. 2001) – entitles an officer in the Coast Guard who holds a permanent appointment as rear admiral (lower half) on the retired list, and who “in time of war or national emergency has served satisfactorily on active duty for two years in that grade or in a higher grade,” to the pay of a rear admiral when on active duty.

(107) 37 U.S.C.A. § 407 (West Supp. 2001) – provides that the exceptions to the prohibition on members of the uniformed services receiving more than one dislocation allowance a year “does not apply in time of national emergency or in time of war.”

Veterans’ affairs.

(108) 38 U.S.C.A. § 1721 – authorizes the Secretary of the Department of Veterans’ Affairs to prescribe rules for good conduct by those receiving services in Department facilities “during a period of national emergency (other than a period of war or an emergency described in section 8111A of this title).”

(109) 38 U.S.C.A. § 8111A – authorizes the Secretary of the Department of Veterans’ Affairs to provide hospital care, nursing home care, and medical services to members of the Armed Forces on active duty “during and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the Armed Forces in armed conflict.”

Reemployment rights.

(110) 38 U.S.C.A. § 4303 (West Supp. 2001) – includes within the definition of “uniformed services” for purposes of entitlement to the reemployment and other rights protected by the statute “the Armed Forces, the Army National Guard and the Air National Guard ..., the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.”

(111) 38 U.S.C.A. § 4312(c) (West Supp. 2001) – limits the reemployment rights of those absent from their jobs because of service in the uniformed service to five years unless a longer absence is because the individual, *inter alia*, was “ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress, as determined by the Secretary concerned.”

Defense structures in the District of Columbia.

(112) 40 U.S.C.A. § 71d – excludes from the consultation procedures mandated for federal and D.C. agencies with the National Capital Planning Commission for construction projects in D.C. “structures erected by the Department of Defense during wartime or national emergency within existing military, naval, or Air Force reservations, except that the appropriate defense agency shall consult with the Commission as to any developments which materially affect traffic or require coordinated planning of the surrounding area.”

Davis-Bacon Act.

(113) 40 U.S.C.A. § 276a-5 – allows the President to suspend the requirements of the Davis-Bacon Act mandating that laborers and mechanics on federal and D.C. construction and public works projects be paid prevailing wages “in the event of a national emergency.”

Real property and contracts.

(114) 40 U.S.C.A. § 484(e)(3) – allows GSA to negotiate disposal and contracts for disposal of surplus property without first seeking public bids “but subject to obtaining such competition as is feasible under the circumstances, if necessary in the public interest during the period of a national emergency declared by the President or the Congress”

(115) 40 U.S.C.A. § 534 – allows GSA to waive the procedures otherwise applicable to the disposal or acquisition of real property in urban areas “during any period of national emergency proclaimed by the President.”

(116) 41 U.S.C.A. § 253 (West Supp. 2001) – authorizes executive agencies to use noncompetitive procurement procedures if “it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization”

Public Health Service.

(117) 42 U.S.C.A. § 204 – authorizes the Public Health Service to maintain a Reserve Corps “for the purpose of securing a reserve for duty in the Service in time of national emergency.”

(118) 42 U.S.C.A. § 211(k) – allows commissioned officers in the Regular Corps of the Public Health Service to be recommended for promotion to any higher grade in their category, including the director grade, whether or not a vacancy exists in such grade, “in time of war or of national emergency proclaimed by the President.”

(119) 42 U.S.C.A. § 217 – authorizes the President to use the Public Health Service, “in time of war, or of emergency proclaimed by the President ... in such manner as shall in his judgment promote the public interest” and, “in time of war, or of emergency involving the national defense proclaimed by the President,” to declare the commissioned corps of the Service to be a military service constituting

a branch of the land and naval forces of the United States subject to the Uniform Code of Military Justice.

Prohibition of compensation.

(120) 42 U.S.C.A. § 1712 – bars employees of contractors of the U.S. providing services outside of the U.S. who suffer injury or death from a war hazard from receiving compensation if they have been “convicted in a court of competent jurisdiction of any subversive act against the United States or any of its allies, committed after the declaration by the President on May 27, 1941, of the national emergency”

Nuclear Regulatory Commission.

(121) 42 U.S.C.A. § 2138 – authorizes the Nuclear Regulatory Commission to suspend any licenses it has granted relating to the production or use of special nuclear material, to order the recapture of any such material, and to order the operation of any such facility, “if the Commission finds it necessary to the common defense and security ... whenever the Congress declares that a state of war or national emergency exists.”

Relocation.

(122) 42 U.S.C.A. § 4625(c)(3) – waives the requirement in the Uniform Relocation Assistance Act that a person displaced from their dwelling by a project of a federal agency or one undertaken with federal financial assistance not be required to move until afforded a reasonable opportunity to relocate to a comparable dwelling in the case of “a national emergency declared by the President.”

Resources.

(123) 42 U.S.C.A. § 6393(a)(2)(A) – waives the requirement that minimum of 30 days be allowed for comment on proposed rules and regulations to implement the domestic supply availability and standby energy authorities of the Energy Policy and Conservation Act “if the President finds that such waiver is necessary to act expeditiously during an emergency affecting the national security of the United States.”

(124) 43 U.S.C.A. § 155 – states that the provisions of the Engle Act governing the use of the public lands of the United States by the Department of Defense for defense purposes shall not apply “in time of war or national emergency hereafter declared by the President or Congress.”

(125) 43 U.S.C.A. § 1341 – allows the Secretary of the Interior to suspend leases on the outer Continental Shelf, on the recommendation of the Secretary of Defense, “during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953.”

Merchant marine.

(126) 46 U.S.C.A. § 8103(h)(1) – allows the President to suspend the citizenship requirements that otherwise apply to the officers and seamen on documented vessels of the U.S. “during a proclaimed national emergency.”

(127) 46 U.S.C.A. § 8301(d) – allows the Secretary of the Department in which the Coast Guard is operating to suspend the requirements relating to the number of licensed individuals that vessels subject to inspection must have “during a national emergency proclaimed by the President.”

(128) 46 U.S.C.A. Appx. § 835 (West Supp. 2001) – prohibits, “when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President,” the transfer of any vessel or shipyard to non-citizens without the approval of the Secretary of Transportation.

(129) 46 U.S.C.A. Appx. § 1132 (West Supp. 2001)– provides reemployment rights for certain merchant seamen subject to certification by the Secretary of Transportation, *inter alia*, that the individual was employed on a vessel “that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need”

(130) 46 U.S.C.A. Appx. § 1187b(a)(2) (West Supp. 2001) – requires that the owners or operators of U.S. flag vessels included in the Maritime Security Fleet enter into an Emergency Preparedness Agreement that requires them to make available commercial transportation resources “upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security ...” and that supersedes any other agreement regarding “vessel availability in time of war or national emergency.”

(131) 46 U.S.C.A. Appx. § 1187e(g) (West Supp. 2001) – allows the Secretary of Transportation to grant temporary permission to U.S. citizens to provide service to a noncontiguous State or Commonwealth for up to 90 days, “in circumstances where an Act of God, a declaration of war or national emergency, or any other condition occurs that prevents ocean transportation services to such noncontiguous State or Commonwealth from being provided by persons currently providing such service,” if the Governor so requests.

(132) 46 U.S.C.A. Appx. § 1202(d) (West Supp. 2001) – permits the Secretary of Transportation to terminate any charter of DOT vessels “whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President.”

(133) 46 U.S.C.A. Appx. § 1242 (West Supp. 2001) – authorizes the Secretary of Transportation to requisition or purchase any vessel or other watercraft owned by citizens of the United States “whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President” and to transfer the possession or control of any such vessel or watercraft to any other department or agency of the government.

(134) 46 U.S.C.A. Appx. § 2002 (West Supp. 2001) – authorizes the Secretary of Transportation to award a decoration or medal to an individual for service in the merchant marine “in time of war or national emergency proclaimed by the President or Congress, or during operations by the Armed Forces of the United States outside the continental United States under conditions of danger to life and property.”

Communications.

(135) 47 U.S.C.A. § 308 – allows the Federal Communications Commission to waive the requirement of a formal written application for construction permits and station licenses, and modifications and renewals thereof, “during a national emergency proclaimed by the President or declared by Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort.”

(136) 47 U.S.C.A. § 606 – authorizes the President, “upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States,” to close any radio station or other device capable of emitting electromagnetic radiations which can be used as a navigational aid beyond five miles.

Airports.

(137) 49 U.S.C.A. § 47152 – provides that the United States, “during a national emergency declared by the President or Congress,” is entitled to use, control, or possess any part of a public airport that is on surplus property donated by the government.

National Defense Stockpile.

(138) 50 U.S.C.A. § 98f(a)(2) – authorizes any person designated by the President, “in time of war declared by the Congress or during a national emergency,” to use, sell, or otherwise dispose of materials in the National Defense Stockpile that the designee determines are “required for purposes of the national defense.”⁹⁸

Protection of ships and harbors.

(139) 50 U.S.C.A. § 191 – authorizes the Secretary of Transportation, “whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, invasion, or disturbance or threatened disturbance of the international relations of the United States,” to adopt rules and regulations governing the anchorage and movement of all vessels, foreign and domestic, in the territorial waters of the U.S. and, if necessary, to take possession of such vessels; and also authorizes the President, “whenever the President finds that the security of the United States is endangered

⁹⁸For purposes of this authority, “national emergency” is defined to mean “a general declaration of emergency with respect to the national defense made by the President or by the Congress. 50 U.S.C.A. 58h-3.

by reason of actual or threatened war, or invasion, or insurrection or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States,” to take steps to safeguard all vessels, harbors, ports, and waterfront facilities in the U.S. against destruction, loss, or injury.

(140) 50 U.S.C.A. § 196 – provides that at any time vessels can be requisitioned under 46 U.S.C.A. 1242, *supra*, which can come into effect “whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President,” the President may also purchase or requisition merchant vessels not owned by U.S. citizens and lying idle in U.S. waters “which the President finds necessary to the national defense.”

Modification of defense contracts.

(141) 50 U.S.C.A. § 1435 (West Supp. 2001) – provides that the President’s authority to modify defense contracts in order to “facilitate the national defense” without regard to other provisions of law regarding the making, performance, amendment, or modification of contracts is effective “only during a national emergency declared by Congress or the President” and for six months after the termination thereof.

Chemical and biological warfare agents.

(142) 50 U.S.C.A. § 1515 – authorizes the President to suspend the provisions of law governing the production, transportation, location, testing, and disposal of lethal chemical and biological warfare agents “during the period of any war declared by Congress and during the period of any national emergency declared by Congress or by the President.”

(143) 50 U.S.C.A. § 1521 (West Supp. 2001) – authorizes the Secretary of Defense to defer the destruction of up to 10 percent of the stockpile of lethal chemical agents and munitions beyond December 31, 2004, “in the event of a declaration of war by the Congress or of a national emergency by the President or the Congress or if the Secretary of Defense determines that there has been a significant delay in the acquisition of an adequate number of binary chemical weapons to meet the requirements of the Armed Forces.”

National Emergencies Act.

(144) 50 U.S.C.A. § 1631 – requires the President, whenever he “declares a national emergency,” to specify in the declaration or by subsequent executive orders published in the *Federal Register* and transmitted to Congress which emergency statutory authorities he or other officers will exercise, prior to their exercise.

(145) 50 U.S.C.A. § 1641 – requires the President, “when the President declares a national emergency, or Congress declares war,” to maintain a file and index of all significant orders issued during such emergency or war, to transmit such orders to the Congress, and to report to Congress each six months on the total expenditures during that period that are attributable to the exercise of emergency authorities conferred by such declaration.

International Economic Emergency Powers Act.

(146) 50 U.S.C.A. § 1701 – authorizes the President to exercise the extensive powers with respect to the property of, and economic transactions with, a foreign country or entity granted by the International Emergency Economic Powers Act (IEEPA) “to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”

(147) 50 U.S.C.A. § 1702 – exempts from any economic embargo imposed under IEEPA donations of articles such as food, clothing, and medicine intended to relieve human suffering unless the President determines, *inter alia*, that such donations “would seriously impair his ability to deal with any national emergency declared under section 1701 of this title.”

(148) 50 U.S.C.A. § 1706 – provides that foreign assets frozen pursuant to IEEPA may remain frozen beyond the date of the termination of the national emergency if necessary “on account of claims involving such country or its nationals.”

CIA retirement plan.

(149) 50 U.S.C.A. § 2083 (West Supp. 2001) – provides that a participant in the CIA retirement plan who, “during the period of any war or of any national emergency as proclaimed by the President or declared by the Congress,” leaves to enter military service shall not be deemed as separated from the agency for purposes of the retirement plan unless the military service extends beyond five years.

Trading with the Enemy Act.

(150) 50 U.S.C.A. Appx. § 9 – authorizes the President, “in time of war or during any national emergency declared by the President,” to sell foreign assets frozen under TWEA notwithstanding the existence of a suit by a person claiming that the property was improperly frozen or that he is otherwise legally entitled to the property if “the interest and welfare of the United States require the sale”

Selective Service Act.

(151) 50 U.S.C.A. Appx. § 454(a) – provides that the President can vary the specified standards for physical and mental fitness of inductees into the armed forces “except in time of war or national emergency declared by the Congress”; that those who voluntarily enlist cannot have their enlistment extended without their consent “until after a declaration of war or national emergency by the Congress”; and that various exceptions from requirements of service in the reserves or from orders to active duty without consent do not apply “in time of war or national emergency declared by Congress.”

(152) 50 U.S.C.A. Appx. § 456 – provides that various exceptions to liability for induction into the armed forces for veterans of World War II and members of the Reserves and the National Guard do not apply “after a declaration

of war or national emergency made by the Congress” and that the exception for those who have had a close relative killed in the line of duty does not apply “during the period of a war or a national emergency declared by Congress.”

(153) 50 U.S.C.A. Appx. § 460(e) – provides that the statutory ceiling on the number of armed forces personnel who may be assigned to the Selective Service System does not apply “during a time of war or a national emergency declared by Congress or the President” and mandates that the System be maintained as an active standby organization capable of immediate operation “in the event of a national emergency.”

Defense Production Act.

(154) 50 U.S.C.A. Appx. § 2091(a)(3) (West Supp. 2001) – provides that certain conditions that are prerequisite to the President’s exercise of the authority under Title III to provide guarantees for the financing of contracts or other operations deemed necessary for the “procurement of materials or performance of services for the national defense” do not apply “during periods of national emergency declared by Congress or the President.”

(155) 50 U.S.C.A. Appx. § 2091(e)(1)(D) (West Supp. 2001) – provides that the aggregate ceiling of \$50 million on the total amount of financing guarantees that can be outstanding under Title III and certain other conditions may be waived “during periods of national emergency declared by the Congress or the President.”

(156) 50 U.S.C.A. Appx. § 2092 (West Supp. 2001) – provides that certain Presidential determinations that are prerequisite to the making of direct federal loans under Title III for the expansion of productive capacity and supply for the national defense do not apply and that the aggregate ceiling of \$50 million on such loans and certain other procedural requirements may be waived “during periods of national emergency declared by the Congress or the President.”

(157) 50 U.S.C.A. App. § 2093 (West Supp. 2001) – provides that a number of conditions and prerequisites to the exercise of the authority under Title III to expand the productive capacity and supply of private industry for national defense purposes by means of purchase and resale of an industrial resource, a critical technology item, or a critical and strategic raw material may be waived “during periods of national emergency declared by the Congress or the President.”

(2) Statutory Authorities Triggered by the Existence of a State or Time of War

As is clear in the preceding section, a number of standby statutory authorities can come into effect not only as the result of the existence of a state of war but also as the result of a declaration of national emergency. A large number, however, are triggered almost exclusively by the existence of a state or time of war. The following list includes the statutes that are triggered by a state or time of war and includes those that may also be triggered by a declaration of war:

Administrative procedure.

(1) 5 U.S.C.A. § 551(1) – excludes “military authority exercised in the field in time of war or in occupied territory” from the definition of “agency” for purposes of general administrative procedure.

(2) 5 U.S.C.A. § 701(1) – excludes “military authority exercised in the field in time of war or in occupied territory” from the definition of “agency” for purposes of judicial review of administrative procedure.

Compensation.

(3) 5 U.S.C.A. § 8114(e)(3) – prohibits accounting for “bonus or pay for particularly hazardous service in time of war” when computing pay to compensate government employees for work injuries.

Aliens.

(4) 8 U.S.C.A. § 1231(a)(2) – provides that when the Attorney General decides that it is “impracticable, inadvisable, inconvenient, or impossible” to remove an alien to the country where the alien is a citizen or subject because the “United States is at war,” the alien may be removed to the “country that is host to a government in exile of the country of which the alien is a citizen or subject” or to “a country... that is very near to the country that is host to a government in exile of the country of which the alien is a citizen or subject” or to “a country...that is very near to the country of which the alien is a citizen or subject.”

(5) 8 U.S.C.A. § 1425 – makes any person who deserted or shall desert the armed forces at “any time during which the United States has been or shall be at war” ineligible to become a naturalized citizen of the United States.

(6) 8 U.S.C.A. § 1438 – authorizes the Attorney General to naturalize former United States citizens who lost citizenship by serving “in the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941, and before September 2, 1945.”

(7) 8 U.S.C.A. § 1442 (a) – authorizes the Attorney General to naturalize an alien from a country with which the United States is at war after the alien’s loyalty to the United States is established if the alien's application for naturalization was “pending at the beginning of the state of war and the applicant is otherwise entitled to admission to citizenship.”

(8) 8 U.S.C.A. § 1455(d) – prohibits the Attorney General from charging or collecting a naturalization fee “during the time when the United States is at war” from an alien in the military, air, or naval service of the United States for filing an application for naturalization or issuing a certificate of naturalization upon admission to citizenship.

(9) 8 U.S.C.A. § 1481(a)(3) and 6) – provides that a person who is a national of the United States whether by birth or naturalization shall lose his nationality by serving in the armed forces of a foreign state “if such armed forces are engaged in hostilities against the United States” and by voluntarily making “a formal written renunciation of nationality...whenever the United States shall be in a state of war”

and the Attorney General approves such renunciation as “not contrary to the interests of national defense.”

Armed forces.

(10) 10 U.S.C.A. § 152(a) – provides that “in time of war there is no limit on the number of reappointments” the President may make of the same person to the two-year position of Chairman of the Joint Chiefs of Staff.

(11) 10 U.S.C.A. § 154(a) – provides that “in time of war there is no limit on the number of reappointments” the President may make of the same person to the two-year position of Vice Chairman of the Joint Chiefs of Staff.

(12) 10 U.S.C.A. § 351 – authorizes the President to “arm, have armed, or allow to be armed” any watercraft or aircraft used as a means of transportation “on, over, or under water” during a “war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.”

(13) 10 U.S.C.A. § 772(e) – authorizes a person not on active duty who served honorably “in time of war” in the Army, Navy, Air Force, or Marine Corps to bear the title, and, “when authorized by regulations prescribed by the President,” wear the uniform, of the “highest grade held by him during that war.”

(14) 10 U.S.C.A. § 802(a) – subjects “persons serving with or accompanying an armed force in the field... in time of war” to the “uniform code of military justice.”

(15) 10 U.S.C.A. § 843 – provides that a person charged with “absence without leave or missing movement in time of war,” or with any offense punishable by death, may be tried and punished at any time without limitation and that a person charged with an “offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security” may be tried and punished up to “six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.”

(16) 10 U.S.C.A. § 885 (c) – provides that any person found guilty of desertion or attempt to desert the armed forces shall be punished, “if the offense is committed in time of war,” by death or “such other punishment as a court-martial may direct.”

(17) 10 U.S.C.A. § 890 – provides that any member of the armed forces who “willfully disobeys a lawful command of his superior commissioned officer” shall be punished, “if the offense is committed in time of war.”

(18) 10 U.S.C.A. § 901 – provides that any person subject to the UCMJ who “in time of war discloses the parole or countersign to any person not entitled to receive it” or who gives to another who is entitled to receive and use the parole or countersign a “different parole or countersign from that which, to his knowledge, he was authorized and required to give,” shall be punished by death or such other punishment as a court-martial may direct.

(19) 10 U.S.C.A. § 905 – provides that any person subject to the UCMJ who, “while in the hands of the enemy in time of war,” acts to the detriment of other prisoners to receive favorable treatment or maltreats his fellow prisoners without justifiable cause shall be punished as a court-martial may direct.

(20) 10 U.S.C.A. § 907 – provides that “any person who in time of war is found lurking as a spy or acting as a spy” with respect to the armed forces or defense entities shall be tried by a court-martial and, if convicted, be punished by death.

(21) 10 U.S.C.A. § 913 – provides that any sentinel or look-out who is found drunk or sleeping at his post, or who leaves it before he is relieved, shall be punished by death if the offense is committed “in time of war” and by such other punishment as a court-martial may direct at other times.

(22) 10 U.S.C.A. § 1161(a) – provides that no commissioned officer may be dismissed from any armed force except by sentence of a general court-martial, in commutation of a sentence of a general court-martial, or “in time of war, by order of the President.”

(23) 10 U.S.C.A. § 2366(c) – authorizes the President to suspend the operation of any provision related to the survivability testing and lethality testing required before full-scale production of any major systems and munitions programs “in time of war or mobilization.”

(24) 10 U.S.C.A. § 2457(b) – states as policy the dispersal of manufacturing facilities and standardization of equipment among North Atlantic Treaty Organization members to “minimize potential economic hardship to parties to the agreements and increase the survivability, in time of war.”

(25) 10 U.S.C.A. § 2538 – authorizes the President, through the head of any department, to seize immediate possession of any plant that is “equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces” and to manufacture products at such plant “in time of war or when war is imminent.”

(26) 10 U.S.C.A. § 2539 – provides that the Secretary of Defense may maintain a list of privately owned plants in the United States that have a capacity “sufficient to warrant conversion into ammunition plants in time of war or when war is imminent,” and may obtain complete information as to the equipment of each of those plants.

(27) 10 U.S.C.A. § 2552 – provides that the Secretary of a military department may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to “any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war.”

(28) 10 U.S.C.A. § 2644 – authorizes the Secretary of Defense in “time of war” to take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or “for other purposes related to the emergency.”

(29) 10 U.S.C.A. § 2663(b) – provides that, “in time of war or when war is imminent,” the United States may, immediately upon the filing of a petition for condemnation, acquire any interest in land, including temporary use, needed for the site, construction, or operation of fortifications, coast defenses, or military training camps, the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives or other munitions of war, or the development and transmission of power for the operation of these production plants.

(30) 10 U.S.C.A. § 2664(d) -- provides that, in “time of war or when war is imminent,” the Secretary of a military department or the Secretary of Transportation may, immediately upon the filing of a petition for condemnation, take and use property related to logging that is needed for production of aircraft, vessels, dry docks, or equipment for them, the procurement of supplies for aircraft, vessels, and dry docks, or housing for persons employed by the Army, Navy, Air Force, or Marine Corps.

(31) 10 U.S.C.A. § 2733(b)– provides that a claim brought against the United States for damage to or loss of real property, damage to or loss of personal property, or personal injury or death caused by an officer, employee, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard that arose in “time of war or armed conflict” must be presented not later than two years after the war or armed conflict is terminated.

(32) 10 U.S.C.A. § 3691 – provides that officers of the Army who have aeronautical ratings as observers may be rated as flying officers in “time of war.”

(33) 10 U.S.C.A. § 4780(a) –authorizes the Secretary of the Army to acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes in “time of war or when war is imminent.”

(34) 10 U.S.C.A. § 5133(c) – provides that “except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty.”

(35) 10 U.S.C.A. § 5540(b) – provides that, “except in time of war,” each member of the Navy and Marine Corps who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States but is retained by a senior officer “as essential to the public interest,” is entitled to an increase in basic pay of 25 percent.

(36) 10 U.S.C.A. § 6972 – provides that the crypt and window spaces of the Naval Academy Chapel may be used only for memorials to officers of the Navy who have successfully commanded a fleet or squadron in battle or who have “received the thanks of Congress for conspicuously distinguished services in time of war.”

(37) 10 U.S.C.A. § 7226 – provides that the Secretary of the Navy shall prescribe a suitable pennant to be known as the Naval Reserve yacht pennant to be flown by a yacht or similar vessel if “the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war.”

(38) 10 U.S.C.A. § 7722 – provides that “whenever in time of war” the Secretary of the Navy certifies to a court, or to a judge of a court, that the prosecution of the suit would tend to endanger the security of naval operations in the war, or would tend to interfere with those operations, all further proceedings in the suit shall be stayed.

(39) 10 U.S.C.A. § 7724 – provides that, “if in time of war, with respect to any claim against the United States on which a suit would lie,” the Secretary of the Navy certifies to the court in which proceedings are pending for the taking of certain depositions, that the proceedings would tend to endanger or interfere with the security of the United States, “then the proceedings may not be started or, if they have been started, they shall, when the certificate is filed, be stayed.”

(40) 10 U.S.C.A. § 8691 – provides that officers of the Air Force who have aeronautical ratings as observers may be rated as flying officers in “time of war.”

(41) 10 U.S.C.A. § 9773 – provides that in selecting sites for air bases and depots and in determining the alteration or enlargement of existing air bases or depots, the Secretary of the Air Force shall consider the need “to permit, in time of peace, training and effective planning in each strategic area for the use and expansion of commercial, municipal, and private flying installations in time of war.”

(42) 10 U.S.C.A. § 9780(a) –authorizes the Secretary of the Army to acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes in “time of war or when war is imminent.”

Trading with the Enemy Act.

(43) 12 U.S.C.A. § 95a – authorizes the President, “during time of war...through any agency that he may designate,” to investigate, regulate, or prohibit, any transactions in foreign exchange, or transactions “involving any property in which any foreign country or a national thereof has any interest.”

Coast Guard.

(44) 14 U.S.C.A. § 2 – provides that the Coast Guard “shall engage in oceanographic research” on the high seas and in waters subject to the jurisdiction of the United States and “maintain a state of readiness to function as a specialized service in the Navy in time of war.”

(45) 14 U.S.C.A. § 508 – provides that any “person who is convicted by court martial for desertion from the Coast Guard in time of war” and is consequently dismissed or dishonorably discharged, shall afterwards not be enlisted, appointed or commissioned in any military or naval service under the United States “unless he is restored to duty in time of war.”

Neutrality.

(46) 22 U.S.C.A. § 441 – provides that when the President finds that there exists “a state of war between foreign states,” the President shall issue a proclamation naming the states involved and shall revoke such proclamation when the “state of war...shall have ceased.”

Miscellaneous.

(47) 22 U.S.C.A. § 1623 – provides that a commission authorized to settle international claims “shall have jurisdiction to receive, examine, adjudicate, and render a final decision” with respect to claims between the United States government and a foreign government “exclusive of governments against which the United States declared the existence of a state of war during World War II.”

(48) 24 U.S.C.A. § 412 – provides that “persons who...served in a war theater during a time of war declared by Congress” are eligible to become residents of an Armed Forces Retirement Home.

(49) 28 U.S.C.A. § 2416(d) – provides that, for the purpose of computing the time limitation periods for commencing court actions brought by the United States, “there shall be excluded all periods during which... the United States is in a state of war.”

Armed forces.

(50) 32 U.S.C.A. § 703 (b)– provides that “in time of actual or threatened war, the United States may requisition for military use” supplies and military publications bought by a state or territory “for cash, at cost plus transportation” from the Army or Air Force.

(51) 32 U.S.C.A. § 715(b) – provides that a Judge Advocate General of the armed force under his jurisdiction “may settle and pay in an amount not more than \$ 100,000” a claim against the United States for property loss, personal injury or death caused by the National Guard and accruing “in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated.”

(52) 37 U.S.C.A. § 301(d) – provides that “in time of war, the President may suspend the payment of incentive pay” to members of a uniformed service for certain hazardous duties.

(53) 37 U.S.C.A. § 301a(c) – provides that “in time of war, the President may suspend the payment of aviation career incentive pay” to members of a uniformed service.

(54) 37 U.S.C.A. § 304(e) – provides that “in time of war, the President may suspend the payment of diving duty pay” to members of a uniformed service.

(55) 37 U.S.C.A. § 901 – provides that “in time of war, an officer of an armed force who is serving with troops operating against an enemy and who exercises, under assignment in orders issued by competent authority, a command above that pertaining to his grade,” is entitled to the pay and allowances “appropriate to the command so exercised.”

(56) 40 U.S.C.A. § 314 – authorizes the President to sell war supplies, materials, and equipment, and the buildings, plants, and equipment necessary for their production, “to any foreign State or Government, engaged in war against any Government with which the United States is at war.”

(57) 42 U.S.C.A. § 213 – provides that commissioned officers of the armed forces and their surviving beneficiaries shall, “with respect to active service performed by such officers... in time of war” be entitled to all rights, privileges, immunities, and benefits now or hereafter provided “under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.”

Infectious diseases.

(58) 42 U.S.C.A. § 266 – authorizes the Surgeon General, on recommendation of the National Advisory Health Council, to “provide by regulations for the apprehension and examination, in time of war,” of any individual reasonably believed to be infected with a disease in a communicable stage that is the “probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces.”

Nuclear energy.

(59) 42 U.S.C.A. § 2165 – authorizes the commission that controls information on atomic energy development in the United States “during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report...”

Natural resources.

(60) 43 U.S.C.A. § 1314 (b) – gives the United States, “in time of war or when necessary for national defense,” the right of first refusal to purchase any portion of lands and natural resources which are “specifically recognized, confirmed, established, and vested in and assigned to the respective States and others.”

(61) 43 U.S.C.A. § 1341(b) – provides that, “in time of war,” the United States shall have the right of first refusal to purchase at the market price all or any portion of “any mineral produced from the outer Continental Shelf.”

(62) 43 U.S.C.A. § 1353 (f) – clarifies that “nothing in this section” related to the federal purchase and disposition of oil and gas shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf “in time of war.”

Destruction of records.

(63) 44 U.S.C.A. § 3311 – provides that “during a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent,” the head of an agency may authorize the destruction of records in his legal custody “situated in a military or naval establishment, ship, or other depository outside the territorial limits of continental United States.”

Miscellaneous.

(64) 46 U.S.C.A. § 5116 – provides that a person causing or allowing the alteration, concealment, or removal of an official mark placed on a vessel by the government, “except to make a lawful change or to escape enemy capture in time of war,” commits a class A misdemeanor.

(65) 46 U.S.C.A. § 7113 – provides that a licensed master, mate, pilot, or engineer of a vessel propelled by machinery or carrying hazardous liquid cargoes in bulk is not “liable to draft in time of war, except for performing duties authorized by the license.”

(66) 46 U.S.C.A. § 133 – exempts hospital ships in the ports of the United States “in time of war, from all dues and taxes imposed on vessels by the laws of the United States, and from all pilotage charges.”

Communications and transportation.

(67) 47 U.S.C.A. § 606 – authorizes the President, “during the continuance of a war in which the United States is engaged,” to direct that communications carriers give preference or priority to “such communications as in his judgment may be essential to the national defense and security”; to use the armed forces to prevent any obstruction of interstate or foreign communication by radio or wire “during any war in which the United States is engaged”; and to suspend or amend all rules and regulations governing wire communications, to close any facility or station for wire communication, and to authorize the use or control of any such facility by the government “upon proclamation ... that there exists a state or threat of war involving the United States.”

(68) 49 U.S.C.A. § 11124(a) – authorizes the President, “during time of war or threatened war,” to direct the Transportation Board to “give preference or priority to the movement of certain traffic” and to direct all rail carriers within the Board’s jurisdiction to “adopt every means within their control to facilitate and expedite” military traffic.

Federal Emergency Management Agency.

(69) 50 U.S.C.A. § 404(b) – provides that one function of the Director of the Federal Emergency Management Agency is to advise the President about programs for the “effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions, policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products, and the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war.”

Trading with the Enemy Act.

(70) 50 U.S.C.A. Appx § 2 – defines “the beginning of the war,” for purposes of the “Trading with the Enemy Act of 1917,” as “midnight ending the

day on which Congress has declared, or shall declare war or the existence of a state of war.”

(71) 50 U.S.C.A. Appx § 5(b) – provides extensive authority to the President, “during time of war...through any agency that he may designate,” to regulate economic transactions with foreign countries and nationals, including the power to block any enemy property within the jurisdiction of the United States and to vest title to that property in the United States.

(72) 50 U.S.C.A. Appx § 10 – provides that any citizen or corporation of the United States or corporation desiring to “manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war” may apply to the President for a license.

(73) 50 U.S.C.A. Appx § 38– provides that any person in the United States may legally donate and deliver any article intended to be used solely to relieve human suffering to persons in a country with which the United States was at war “at any time after the date of cessation of hostilities.”

(3) Statutory Authorities That Require a Declaration of War

As noted in the preceding sections, many statutory authorities that may be triggered by a declaration of war are also triggered by a declaration of national emergency or the existence of a state of war, *i.e.*, their applicability does not necessarily depend on enactment of a declaration of war. The following statutory provisions do require such an enactment:

Congressional Budget Act.

(1) 2 U.S.C.A. § 198 (b) – provides that the rule mandating Congress adjourn sine die by July 31 of each year unless each House adopts a concurrent resolution, “shall not be applicable in any year if on July 31 of such year a state of war exists pursuant to a declaration of war by the Congress.”

(2) 2 U.S.C.A. § 641 – provides that the requirement that amendments to reconciliation bill not increase budget outlays or decrease budget outlay reductions, revenues, or revenue increases unless they include offsetting budget outlay reductions or revenue increases does not apply “if a declaration of war by the Congress is in effect.”

(3) 2 U.S.C.A. § 642(a) (West Supp. 2001) – provides that the requirement making bills, amendments, motions, and conference reports which provide new budget authority that would exceed what Congress has set forth in the concurrent resolution on the budget for that fiscal year or that would reduce revenues below what has been set forth in that concurrent resolution out of order in the House does not apply “when a declaration of war by the Congress is in effect.”

(4) 2 U.S.C.A. § 643(b)(2) (West Supp. 2001) – provides that the requirement making any bill, amendment, motion, or conference report that exceeds the discretionary spending limits set forth in 2 U.S.C.A. App. 901(c) out

of order in the Senate does not apply “if a declaration of war by the Congress is in effect or a joint resolution pursuant to sections 907a and 908 of this title has been enacted.”

(5) 2 U.S.C.A. § 907a(b) – states that sequestration reports and orders and certain other requirements of the Budget Act are precluded or suspended “upon the enactment of a declaration of war” but that the sequestration procedures are restored “effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties”

Coast Guard.

(6) 14 U.S.C.A. § 3 – provides that the Coast Guard shall operate as a service in the Navy “upon the declaration of war or when the President directs”

Unilateral Trade Sanctions.

(7) 22 U.S.C.A. § 7203 (West Supp. 2001) – provides that the prohibition in the “Trade Sanctions Reform and Export Enhancement Act of 2000” barring the President from imposing new unilateral agricultural or medical sanctions without the approval of Congress does not apply with respect to the imposition of such a sanction against a foreign country or entity “(A) pursuant to a declaration of war against the country or entity; (B) pursuant to specific statutory authorization for the use of the Armed Forces of the United States against the country or entity; (C) against which the Armed Forces of the United States are involved in hostilities; or (D) where imminent involvement by the Armed Forces of the United States in hostilities against the country or entity is clearly indicated by the circumstances”

Enemy Alien Act.

(8) 50 U.S.C.A. § 21 – authorizes the President to “apprehend, restrain, secure, and remove” alien enemies ... whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event.”

Foreign Intelligence Surveillance Act (FISA).

(9) 50 U.S.C.A. § 1811 (West Supp. 2001) – provides that notwithstanding any other law, the President may authorize electronic surveillance without a court order under FISA “to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.”

(10) 50 U.S.C.A. § 1829 (West Supp. 2001) – provides that notwithstanding any other law, the President may authorize physical searches without a court order under FISA “to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.”

(11) 50 U.S.C.A. § 1844 (West Supp. 2001) – provides that notwithstanding any other provision of law, the President may authorize the use of a pen register or trap and trace device without a court order under FISA “to acquire foreign

intelligence information for a period not to exceed 15 calendar days following a declaration of war.”

Congressional Procedures for Declaring War or Authorizing the Use of Force

The following section discusses how Congress would act on a joint resolution or bill to declare war or authorize the use of force if the House and Senate were to consider that measure under the regular procedures of each house. It also describes how a measure declaring war or authorizing the use of force would be considered under the procedures contained in the War Powers Resolution of 1973.⁹⁹

Regular Procedures

The Senate’s published precedents do not suggest that a measure proposing to declare war or authorize the use of force, if considered outside the framework of the War Powers Resolution, would be immune from the potentially laborious process to which other bills and joint resolutions are subject (except those that benefit from special expedited procedures under rule-making statutes). For example, a joint resolution declaring war or authorizing the use of force presumably would not be eligible for immediate floor consideration at the time it is introduced, and it presumably would be subject to possible delays resulting from the Senators’ exercise of their right to debate at length.

Similarly, the precedents of the House apparently do not grant privilege to a joint resolution declaring war or authorizing the use of force either under the “leave to report” authority that House rules and precedents give to certain House committees or as a question of the privileges of the House. Concerning the latter, former House Parliamentarian Wm. Holmes Brown has observed that “Rule IX [on questions of privilege] is concerned not with the privileges of the Congress as a legislative branch, but only with the privileges of the House itself.” Thus, neither the enumeration of legislative powers in Article I, sec. 8 of the Constitution nor the prohibition of that article against any withdrawal from the Treasury except by enactment of an appropriation renders a measure purporting to exercise or limit those powers a question of the privileges of the House.¹⁰⁰

Because a joint resolution declaring war or authorizing the use of force proposes to exercise a constitutional power of “the Congress as a legislative branch,” not of the House alone, it would seem, therefore, not to qualify as a question of privilege. If so, the House would consider the joint resolution according to its established procedures

⁹⁹P.L. 93-148. 87 Stat. 555 *et. seq.* 50 U.S.C. 1541 *et. seq.*

¹⁰⁰Wm. Holmes Brown, *House Practice: A Guide to the Rules, Precedents and Procedures of the House*. Washington, U.S. Govt. Print. Off., 1996, p. 692.

for dealing with other legislative measures,¹⁰¹ unless the proposed declaration or authorization were to be considered under the terms of the War Powers Resolution.

Congress has adopted eight declarations of war during the 20th century — two at the outset of U.S. involvement in World War I and six in the course of World War II. House and Senate consideration of the initial declarations in each of these wars is illustrative of the process that Congress followed. On both occasions, the House and Senate acted to declare war in response to urgent presidential requests made personally before joint sessions of Congress. In light of the importance that most Members attached to these requests, it is not surprising that, in both cases, the two houses acted on the joint resolutions quickly and without following all their regular legislative procedures.

By way of illustration, the following is a brief summary of how the House and Senate considered the initial joint resolutions to declare war in 1917 and 1941.

World War I. Congress convened on April 2, 1917, and on that evening, President Wilson addressed both houses to request that Congress declare war against Germany. Immediately after the President’s address, Sen. Martin introduced S.J.Res. 1, to declare war, which was referred to the Committee on Foreign Relations. Also on April 2, Rep. Flood introduced a companion resolution, H.J.Res 24, which was referred to the Committee on Foreign Affairs.

The Senate committee reported S.J.Res. 1 with an amendment on the following day. Sen. LaFollette objected to a unanimous consent request that the Senate consider the measure immediately. Consequently, the joint resolution had to lie over for a day, pursuant to paragraph 4(a) of Senate Rule XVII. On April 4, the Senate agreed by unanimous consent to consider the joint resolution, agreed to the committee amendment, and, after considerable debate, passed the joint resolution by a roll call vote of 82-6.

The House committee reported H.J.Res. 24 on April 4, and the House then agreed, by unanimous consent, to consider the measure on the following day “under the general rules of the House.” Because the joint resolution, once reported, was placed on the Union Calendar, “the general rules of the House” required that it be considered in Committee of the Whole. Consequently, when the House convened on April 5, Rep. Flood moved that the House resolve into Committee of the Whole to consider H.J. Res. 24. Before the House agreed to his motion, however, it also agreed to Rep. Flood’s unanimous consent request that the House instead consider S.J.Res. 1, which the Senate already had passed. After much debate, and after rejecting two amendments in Committee of the Whole and a motion to recommit with instructions in the House, the House passed S.J. Res. 1 by a roll call vote of 373-50.

World War II. On December 8, 1941, President Roosevelt addressed a joint session of Congress and asked for a declaration of war against Japan. Immediately after the joint session ended, the Senate reconvened and, following a live quorum call, Sen. Connolly introduced a joint resolution declaring war. At Sen. Connolly’s

¹⁰¹The House floor discussion on April 4, 1917, concerning procedures for considering H.J.Res. 24, supports this interpretation by implication.

request, and by unanimous consent, the Senate agreed to consider the joint resolution immediately, without committee consideration. Within minutes, and after brief statements by Sens. Connolly and Vandenberg, the Senate passed the joint resolution by a roll call vote of 82-0.

Also immediately after the President's address, the House acted by considering and agreeing to Rep. McCormack's motion to suspend the rules and pass H.J.Res. 254, which Rep. McCormack introduced at that time. December 8 being a Monday, suspension motions were in order on that day. Immediately after the House passed H.J. Res. 254 by a roll call vote of 388-1, the House received a message from the Senate that it already had passed its joint resolution, now numbered S.J. Res. 116. The House then agreed to Rep. McCormack's unanimous consent request that the House take the Senate joint resolution from the Speaker's table and agree to it. This action was necessary in order for both houses to pass the same measure, making it eligible to be presented to the President for his signature.

Congressional Procedures Under The War Powers Resolution

Enactment of the War Powers Resolution in November 1973 created special expedited procedures by which the House and Senate can act on joint resolutions or bills to declare war or authorize the use of force, if those measures are considered in accordance with the other, related provisions of that law.¹⁰²

These expedited procedures were enacted into law as part of the War Powers Resolution as an exercise of the constitutional rule-making powers of the House and Senate. Article I of the Constitution empowers each house to set its own rules. When Congress enacts into law provisions that affect only the internal operations of the House or Senate, or both, those provisions are known as rule-making provisions of law that are enacted pursuant to this grant of power under Article I. Such rule-making provisions have exactly the same force and effect as provisions contained in the Standing Rules of the House and Senate.¹⁰³ Consequently, the house to which certain rule-making provisions apply may enforce, ignore, waive, suspend, supplement, or amend them by its own unilateral action, as it sees fit. For example, the House could adopt a special rule, or the Senate could agree to a unanimous consent request, that would supercede some or all of the procedures described here.

Section 4(a) of the War Powers Resolution directs the President to submit a report to Congress within 48 hours after U.S. armed forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly

¹⁰²These expedited procedures are ambiguous in several respects. The description presented here should not be considered a substitute for consultations with the House or Senate Parliamentarian.

¹⁰³Other examples of rule-making provisions of law are the various congressional procedures enacted as part of the Congressional Budget and Impoundment Control Act of 1974 and related laws, and the "fast-track" provisions found in the Trade Act of 1974 and related laws.

indicated by the circumstances.”¹⁰⁴ Section 5(a) provides for the receipt and for the referral to committee of any such presidential report. Under Section 5(b), the President is required to terminate use of the armed forces within 60 calendar days (90 days in some circumstances) after submitting his report unless Congress takes any one of several actions. One of these actions is to declare war; another is to “enact a specific authorization for such use of United States Armed Forces” as an alternative to declaring war. Under another section of the War Powers Resolution, Congress can also adopt a bill or joint resolution at any time requiring the President to remove the armed forces unless a declaration of war or statutory authorization has been enacted.¹⁰⁵

Section 6 of the War Powers Resolution contains the expedited, or “fast-track”, procedures that were included in the law to enable the House and Senate to act within the 60 calendar-day period on a bill or joint resolution contemplated by Section 5(b).¹⁰⁶

If, under Section 6(a), such a measure is introduced at least 30 calendar days before the end of the 60-day period, the measure is referred to the House International Relations Committee or the Senate Foreign Relations Committee, as the case may be. That committee is required to report one such measure, with its recommendations, not later than 24 calendar days before the end of the 60-day period. This suggests that the committee can report such a measure with the committee’s proposed amendments, if any. The subsection also provides that its provisions are to govern “unless such House shall otherwise determine by the yeas and nays.” In other words, the House or Senate can, by a rollcall vote decided by a simple majority, release its committee from the obligation to report a measure proposing to declare war or to take some other action enumerated in Section 5(b).

If the House or Senate committee does report, it is not required to report the measure favorably. Instead, it may report it unfavorably or without recommendation. But what if either the Senate or House committee fails to report a covered bill or joint resolution within the time permitted? The Senate Parliamentarian has stated that the Senate Foreign Relations Committee would be automatically discharged if it failed to report as required by this subsection. The House Parliamentarian has stated that, should the House International Relations Committee fail to report in a timely manner, a privileged motion to discharge that committee would be in order on the House floor.

Section 6(b) governs initial House and Senate floor consideration of a joint resolution reported from committee pursuant to Section 6(a). Under Section 6(b),

¹⁰⁴Presidential reports also are required under two other conditions enumerated in Sec. 4(a).

¹⁰⁵Prior to 1983, the WPR provided that Congress could mandate the removal of U.S. armed forces by adopting a concurrent resolution. Given the virtual certainty that this procedure was unconstitutional following the Supreme Court’s decision in June, 1983, in *INS v. Chadha*, 462 U.S. 919 (1983), Congress added a new provision to the War Powers Resolution later in 1983 providing for expedited procedures for a bill or joint resolution to require the removal of U.S. armed forces. *See* 50 U.S.C.A. § 1546a.

¹⁰⁶A subsequent section of the WPR mandates expedited procedures for House and Senate consideration of a bill or joint resolution requiring the removal of U.S. armed forces. *See* 50 U.S.C.A. §1546a.

the bill or joint resolution, once reported (or once the committee is discharged), “shall become the pending business” of the House or Senate, as the case may be. By making a covered measure the pending business on the House or Senate floor, the War Powers Resolution evidently makes the measure privileged for floor consideration in the House (without the need for the Rules Committee to report a special rule for that purpose), or obviates the need for a motion (that usually is debatable) to proceed to the measure’s consideration in the Senate. Because Section 6(b) contains no provisions to the contrary, the measure presumably would be amendable on the floor of either house to the same extent as any other bill or joint resolution that house considers or could be tabled.

Section 6(b) goes on to require that the House or Senate vote on final passage of the measure within three calendar days after having become the pending business, “unless such House shall otherwise determine by yeas and nays.” The effect of this subsection probably is more significant for the Senate than the House because it is designed to preclude a filibuster on the Senate floor. In addition, the last provision of the subsection evidently gives either house options to adjust the timing and length of floor consideration by adopting any of several conceivable motions by rollcall vote. For example, either house might agree by motion to postpone consideration of the measure to a date certain. Alternatively, either house might dispose of the measure by a rollcall vote in favor of a motion to table or recommit it or to postpone its consideration indefinitely. Under the same authority, the House or Senate also might be able to shorten the debate to less than three calendar days or to extend the time for debate.

Sections 6(c) and 6(d) address the process for the House and Senate to reach agreement when each has passed a measure covered by Section 5(b). In summary, Section 6(c) provides for expedited committee and floor action in one house on a covered measure that the other house already has passed. Finally, Section 6(d) states that if a conference is necessary to reach a compromise between House and Senate versions of a covered measure, the conferees are to be appointed “promptly,” the conferees are to report in either agreement or disagreement within specified time periods, and the two houses are to act on the conference report before the end of the 60-day period.

The problem with respect to these last two subsections is that no rules or rule-making statute can compel the House and Senate to reach agreement. All that expedited procedures can do is to require that the conferees report, and that the House and Senate act on their report, by a time certain. The War Powers Resolution cannot ensure that both houses will agree on the same position by the end of the 60-day period. If the two houses were unable to agree by the end of the 60 days, that situation presumably would be reflected in (1) votes by one or both houses to reject a conference report in agreement, or (2) votes by both houses to agree to a conference report in disagreement (in other words, votes in each house to accept the report of the conferees that they were unable to reach agreement within the time allotted them). In either case, there is nothing in the statute that would preclude the two houses from appointing a new conference committee that might present a new conference report in agreement at some later date. However, a conference report filed in the Senate after the expiration of the 60-day period might well be subject to extended debate because, presumably, consideration of the report no longer would be

governed by Section 6. Instead, the report would be considered under the Senate's regular procedures.

Appendix 1. Texts of Formal Declarations of War by the United States

War with Great Britain 1812

(Act of Jun. 18, 1812, ch. 102, 2 Stat 755)

CHAP. CII.—*An Act declaring War between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.

APPROVED, June 18, 1812.

War with Mexico 1846

(Act of May 13, 1846, ch. 16, 9 Stat. 9)

CHAP. XVI.—*An Act providing for the Prosecution of the existing War between the United States and the Republic of Mexico.*

Whereas, by the act of the Republic of Mexico, a state of war exists between that Government and the United States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of enabling the government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is hereby, authorized to employ the militia, naval, and military forces of the United States, and to call for and accept the services of any number of volunteers, not exceeding fifty thousand, who may offer their services, either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of ten millions of dollars, out of any moneys in the treasury, or to come into the treasury, not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect.

SEC. 2. *And be it further enacted, That the militia, when called into the service of the United States by virtue of this act, or any other act, may, if in the opinion of the President of the United States the public interest requires it, be compelled to serve for a term not exceeding six months after their arrival at the place of rendezvous, in any one year, unless sooner discharged.*

SEC. 3. *And be it further enacted*, That the said volunteers shall furnish their own clothes, and if cavalry, their own horses and horse equipments; and when mustered into service shall be armed at the expense of the United States.

SEC. 4. *And be it further enacted*, That said volunteers shall, when called into actual service, and while remaining therein, be subject to the rules and articles of war, and shall be, in all respects except as to clothing and pay, placed on the same footing with similar corps of the United States army; and in lieu of clothing every non-commissioned officer and private in any company, who may thus offer himself, shall be entitled, when called into actual service, to receive in money a sum equal to the cost of clothing of a non-commissioned officer or private (as the case may be) in the regular troops of the United States.

SEC 5. *And be it further enacted*, That the said volunteers so offering their services shall be accepted by the President in companies, battalions, squadrons, and regiments, whose officers shall be appointed in the manner prescribed by law in the several States and Territories to which such companies, battalions, squadrons, and regiments, shall respectively belong.

SEC. 6. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to organize companies so tendering their service into battalions or squadrons, battalions and squadrons into regiments, regiments into brigades, and brigades into divisions, as soon as the number of volunteers shall render such organization, in his judgment, expedient; and the President shall, if necessary, apportion the staff, field, and general officers among the respective States and Territories from which the volunteers shall tender their services as he may deem proper.

SEC 7. *And be it further enacted*, That the volunteers who may be received into the service of the United States by virtue of the provisions of this act, and who shall be wounded or otherwise disabled in the service, shall be entitled to all the benefit which may be conferred on persons wounded in the service of the United States.

SEC 8. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized forthwith to complete all the public armed vessels now authorized by law, and to purchase or charter, arm, equip, and man, such merchant vessels and steam boats as, upon examination, may be found fit, or easily converted into armed vessels fit for the public service, and in such number as he may deem necessary for the protection of the seaboard, lake coast, and the general defence of the country.

SEC. 9. *And be it further enacted*, That whenever the militia or volunteers are called and received into the service of the United States, under the provisions of this act, they shall have the organization of the army of the United States, and shall have the same pay and allowances; and all mounted privates, non-commissioned officers, musicians, and artificers, shall be allowed 40 cents per day for the use and risk of their horses, except of horses actually killed in action; and if any mounted volunteer, private, non-commissioned officer, musician, or artificer, shall not keep himself provided with a serviceable horse, the said volunteer shall serve on foot.

APPROVED, May 13, 1846.

War with Spain 1898

(Act of Apr. 25, 1898, ch. 189, 30 Stat. 364)

CHAP. 189—An Act Declaring that war exists between the United States of America and the Kingdom of Spain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this Act into effect.

Approved, April 25, 1898.

War with Germany 1917

(Act of Apr. 6, 1917, ch. 1, 40 Stat. 1)

CHAP. 1. — Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, April 6, 1917.

War with Austria-Hungary 1917

(Act of Dec. 7, 1917, ch. 1, 40 Stat. 429)

CHAP. 1. — Joint Resolution Declaring that a state of war exists between the Imperial and Royal Austro-Hungarian Government and the Government and the people of the United States, and making provision to prosecute the same.

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 7, 1917.

War with Japan 1941

(Act of Dec. 8, 1941, ch. 561, 55 Stat. 795)

[Chapter 561]

JOINT RESOLUTION

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 8, 1941, 4:10 p.m., E.S.T.

War with Germany 1941

(Act of Dec. 11, 1941, ch. 564, 55 Stat. 796)

[CHAPTER 564]

JOINT RESOLUTION

Declaring that a state of war exists between the Government of Germany and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Government of Germany has formally declared war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Germany; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 11, 1941, 3:05 p.m., E.S.T.

War with Italy 1941

(Act of Dec. 11, 1941, ch. 565, 55 Stat. 797)

[CHAPTER 565]

JOINT RESOLUTION

Declaring that a state of war exists between the Government of Italy and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Government of Italy has formally declared war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Government of Italy which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Italy; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 11, 1941, 3:06 p.m., E.S.T.

War With Bulgaria 1942

(Act of Jun. 5, 1942, ch. 323, 56 Stat. 307)

[CHAPTER 323]

JOINT RESOLUTION

Declaring that a state of war exists between the Government of Bulgaria and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Government of Bulgaria has formally declared war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Government of Bulgaria which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to

employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Bulgaria; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, June 5, 1942.

War with Hungary 1942

(Act of Jun. 5, 1942, ch. 324, 56 Stat. 307)

[CHAPTER 324]

JOINT RESOLUTION

Declaring that a state of war exists between the Government of Hungary and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Government of Hungary has formally declared war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Government of Hungary which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Hungary; and, to bring the conflict to a successful termination all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, June 5, 1942.

War with Rumania 1942

(Act of Jun. 5, 1942, ch. 325, 56 Stat. 307)

[CHAPTER 325]

JOINT RESOLUTION

Declaring that a state of war exists between the Government of Rumania and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Government of Rumania has formally declared war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Government of Rumania which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Government of Rumania; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, June 5, 1942.

Appendix II. Texts of Key Authorizations of Use of Force

Protection of the Commerce and Coasts of the United States

(Act of May 28, 1798, ch. 48, 1 Stat. 561)

CHAP. XLVIII.—*An Act more effectually to protect the Commerce and Coasts of the United States.*

Whereas armed vessels sailing under authority or pretence [*sic*] of authority from the Republic of France, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations, and treaties between the United States and the French nation. Therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the President of the United States, and he is hereby authorized to instruct and direct the commanders of the armed vessels belonging to the United States to seize, take and bring into any port of the United States, to be proceeded against according to the laws of nations, any such armed vessel which shall have committed or which shall be found hovering on the coasts of the United States, for the purpose of committing depredations on the vessels belonging to citizens thereof;—and also to retake any ship or vessel, of any citizen or citizens of the United States which may have been captured by any such armed vessel.

APPROVED, May 28, 1798.

Protection of the Commerce of the United States

(Act of July 9, 1798, ch. 68, 1 Stat. 578)

CHAP. LXVIII—*An Act further to protect the Commerce of the United States.*

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States shall be, and he is hereby authorized to instruct the commanders of the public armed vessels which are, or which shall be employed in the service of the United States, to subdue, seize and take any armed French vessel, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas, and such captured vessel, with her apparel, guns and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited; and shall accrue and be distributed, as by law is or shall be provided respecting the captures which shall be made by the public armed vessels of the United States.

SEC. 2. *And be it further enacted,* That the President of the United States shall be, and he is hereby authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application thereof, special commissions in the form which he shall direct, and under the seal of the United States; and such

private armed vessels, when duly commissioned, as aforesaid, shall have the same license and authority for the subduing, seizing and capturing any armed French vessel, and for the recapture of the vessels, goods and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instructions as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions which shall be granted, as aforesaid, shall be revocable at the pleasure of the President of the United States.

SEC. 3. *Provided, and be it further enacted*, That every person intending to set forth and employ an armed vessel, and applying for a commission, as aforesaid, shall produce in writing the name, and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, the number of the crew and the name of the commander, and the two officers next in rank appointed for such vessel; which writing shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

SEC. 4. *And provided, and be it further enacted*, That before any commission, as aforesaid, shall be issued, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or if such vessel be provided with more than one hundred and fifty men, then in the penal sum of fourteen thousand dollars; with condition that the owners, and officers, and crews who shall be employed on board of such commissioned vessel, shall and will observe the treaties and laws of the United States and the instructions which shall be given them for the regulation of their conduct: And will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof, by such vessel, during her commission, and to deliver up the same when revoked by the President of the United States.

SEC. 5. *And be it further enacted*, That all armed French vessels, together with their apparel, guns and appurtenances, and any goods or effects which shall be found on board the same, being French property, and which shall be captured by any private armed vessel or vessels of the United States, duly commissioned, as aforesaid, shall be forfeited, and shall accrue to the owners thereof, and the officers and crews by whom such captures shall be made; and on due condemnation had, shall be distributed according to any agreement which shall be between them; or in failure of such agreement, then by the discretion of the court before whom such condemnation shall be.

SEC. 6. *And be it further enacted*, That all vessels, goods and effects, the property of any citizen of the United States, or person resident therein, which shall be recaptured, as aforesaid, shall be restored to the lawful owners, upon payment by them, respectively, of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court of the United States having maritime jurisdiction according to the nature of each case: *Provided*, that such allowance shall not be less than one eighth, or exceeding one half of the full value of such recapture, without any deduction. And such salvage shall be distributed to and among the owners, officers and crews of the private armed vessel or vessels entitled thereto, according to any agreement which shall be between them; or in case of no agreement, then by the decree of the court who shall determine upon such salvage.

SEC. 7. *And be it further enacted*, That before breaking bulk of any vessel which shall be captured, as aforesaid, or other disposal or conversion thereof, or of

any articles which shall be found on board the same, such capture shall be brought into some port of the United States, and shall be libelled and proceeded against before the district court of the same district; and if after a due course of proceedings, such capture shall be decreed as forfeited in the district court, or in the circuit court of the same district, in the case of any appeal duly allowed, the same shall be delivered to the owners and captors concerned therein, or shall be publicly sold by the marshal of the same court, as shall be finally decreed and ordered by the court. And the same court, who shall have final jurisdiction of any libel or complaint of any capture, as aforesaid, shall and may decree restitution, in whole or in part, when the capture and restraint shall have been made without just cause, as aforesaid; and if made without probable cause, or otherwise unreasonably, may order and decree damages and costs to the party injured, and for which the owners, officers and crews of the private armed vessel or vessels by which such unjust capture shall have been made, and also such vessel or vessels shall be answerable and liable.

SEC. 8. *And be it further enacted*, That all French persons and others, who shall be found acting on board any French armed vessel, which shall be captured, or on board of any vessel of the United States, which shall be captured, or on board of any vessel of the United States, which shall be recaptured, as aforesaid, shall be reported to the collector of the port in which they shall first arrive, and shall be delivered to the custody of the marshal, or of some civil or military officer of the United States, or of any state in or near such port; who shall take charge for their safe keeping and support, at the expense of the United States.

APPROVED, July 9, 1798.

Protection of the Commerce and Seamen of the United States Against the Tripolitan Cruisers

(Act of February 6, 1802, ch. 4, 2 Stat.129)

CHAP. IV.—*An Act for the protection of the Commerce and Seamen of the United States, against the Tripolitan Cruisers.*

Whereas the regency of Tripoli, on the coast of Barbary, has commenced a predatory warfare against the United States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful fully to equip, officer, man, and employ such of the armed vessels of the United States as may be judged requisite by the President of the United States, for protecting effectually the commerce and seamen thereof on the Atlantic ocean, the Mediterranean and adjoining seas.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States to instruct the commanders of the respective public vessels aforesaid, to subdue, seize and make prize of all vessels, goods, and effects, belonging to the Bey of Tripoli, or to his subjects, and to bring or send the same into port, to be proceeded against, and distributed according to the law; and also to cause to be done all such other acts of precaution or hostility as the state of war will justify, and may, in his opinion, require.

SEC. 3. *And be it further enacted*, That on the application of, the owners of private armed vessels of the United States, the President of the United States may grant to them special commissions, in the form which he shall direct, under the seal

of the United States; and such private armed vessels, when so commissioned, shall have the like authority for subduing, seizing, taking, and bringing into port, any Tripolitan vessel, goods or effects, as the before-mentioned public armed vessels may by law have; and shall therein be subject to the instruction which may be given by the President of the United States for the regulation of their conduct; and their commissions shall be revocable at his pleasure. *Provided*, that before any commission shall be granted, as aforesaid, the owner or owners of the vessel for which the same may be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or, if such vessel be provided with more than one hundred and fifty men, in the penal sum of fourteen thousand dollars, with condition for observing the treaties and laws of the United States, and the instructions which may be given, as aforesaid; and also, for satisfying all damages and injuries which shall be done, contrary to the tenor thereof, by such commissioned vessel; and for delivering up the commission, when revoked by the President of the United States.

SEC. 4. *And be it further enacted*, That any Tripolitan vessel, goods or effects, which shall be so captured and brought into port, by any private armed vessel of the United States, duly commissioned, as aforesaid, may be adjudged good prize, and thereupon shall accrue to the owners and officers, and men of the capturing vessel, and shall be distributed according to the agreement which shall have been made between them, or, in failure of such agreement, according to the discretion of the court having cognizance of the capture.

SEC. 5. *And be it further enacted*, That the seamen may be engaged to serve in the navy of the United States for a period not exceeding two years; but the President may discharge the same sooner, if in his judgment, their services may be dispensed with.

APPROVED, February 6, 1802.

Protection of the Commerce and Seamen of the United States Against the Algerine Cruisers

(Act of March 3, 1815, ch. 90, 3 Stat. 230)

CHAP. XC.—*An Act for the protection of the commerce of the United States against the Algerine cruisers.*

Whereas the Dey of Algiers, on the coast of Barbary, has commenced a predatory warfare against the United States—

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be lawful fully to equip, officer, man and employ such of the armed vessels of the United States as may be judged requisite by the President of the United States for protecting effectually the commerce and seamen thereof on the Atlantic Ocean, the Mediterranean and adjoining seas.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States to instruct the commanders of the respective public vessels aforesaid, to subdue, seize, and make prize of all vessels, goods and effects of or belonging to the Dey of Algiers, or to his subjects, and to bring or send the same into port, to be proceeded against and distributed according to law; and, also, to cause to

be done all such other acts of precaution or hostility, as the state of war will justify, and may in his opinion require.

SEC. 3. *And be it further enacted*, That on the application of the owners of private armed vessels of the United States, the President of the United States may grant them special commissions in the form which he shall direct under the seal of the United States; and such private armed vessels, when so commissioned, shall have the like authority for subduing, seizing, taking and bringing into port any Algerine vessel, goods or effects, as the before-mentioned public armed vessels may by law have; and shall therein be subject to the instructions which may be given by the President of the United States for the regulation of their conduct; and their commissions shall be revokable at his pleasure. *Provided*, That before any commission shall be granted as aforesaid, the owner or owners of the vessels of which the same may be requested, and the commander thereof for the time being shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars, or if such vessel be provided with more than one hundred and fifty men, in the penal sum of fourteen thousand dollars, with condition for observing the treaties and laws of the United States, and the instructions which may be given as aforesaid, and also for satisfying all damages and injuries which shall be done contrary to the tenor thereof by such commissioned vessel, and for delivering up the commission when revoked by the President of the United States.

SEC. 4. *And be it further enacted*, That any Algerine vessel, goods, or effects which may be so captured and brought into port, by any private armed vessel, of the United States, duly commissioned as aforesaid, may be adjudged good prize, and thereupon shall accrue to the owners, and officers, and men of the capturing vessel, and shall be distributed according to the agreement which shall have been made between them, or, in failure of such agreement, according to the discretion [of] the court having cognisance of the capture.

APPROVED, March 3, 1815.

Authorization for the President To Employ the Armed Forces of the United States for Protecting the Security of Formosa, the Pescadores, and Related Positions and Territories of That Area

(Act of January 29, 1955, ch.4, 69 Stat. 7. [H.J. Res. 159, P.L. 84-4])

P.L. 4, CHAPTER 4—Joint Resolution authorizing the President to employ the Armed Forces of the United States for protecting the security of Formosa, the Pescadores and related positions and territories of that area.

Whereas the primary purpose of the United States, in its relations with all other nations, is to develop and sustain a just and enduring peace for all; and
 Whereas certain territories in the West Pacific under the jurisdiction of the Republic of China are now under armed attack, and threats and declarations have been and are being made by the Chinese Communists that such armed attack is in aid of and in preparation for armed attack on Formosa and the Pescadores,
 Whereas such armed attack if continued would gravely endanger the peace and security of the West Pacific Area and particularly of Formosa and the Pescadores; and

Whereas the secure possession by friendly governments of the Western Pacific Island chain, of which Formosa is a part, is essential to the vital interests of the United States and all friendly nations in or bordering upon the Pacific Ocean; and Whereas the President of the United States on January 6, 1955, submitted to the Senate for its advice and consent to ratification a Mutual Defense Treaty between the United States of America and the Republic of China, which recognizes that an armed attack in the West Pacific area directed against territories, therein described, in the region of Formosa and the Pescadores, would be dangerous to the peace and safety of the parties to the treaty: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he hereby is authorized to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa, and the Pescadores against armed attack, this authority to include the securing and protection of such related positions and territories of that area now in friendly hands and the taking of such other measures as he judges to be required or appropriate in assuring the defense of Formosa and the Pescadores.

This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United States or otherwise, and shall so report to the Congress.

Approved January 29, 1955, 8:42 a.m.

Promotion of Peace and Stability in the Middle East

(P.L. 85-7, 71 Stat. 5, March 9, 1957 [H.J.Res. 117])

P.L. 85-7--*Joint Resolution, To promote peace and stability in the Middle East.*

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be and hereby is authorized to cooperate with and assist any nation or group of nations in the general area of the Middle East desiring such assistance in the development of economic strength dedicated to the maintenance of national independence.

SEC. 2. The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any such nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism: *Provided,* That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States.

SEC. 3. The President is hereby authorized to use during the balance of fiscal year 1957 for economic and military assistance under this joint resolution not to exceed \$200,000,000 from any appropriation now available for carrying out the provisions for the Mutual Security Act of 1954, as amended, in accord with the provisions of such Act: *Provided,* That, whenever the President determines it to be important to the security of the United States, such use may be under the authority

of section 401 (a) of the Mutual Security Act of 1954, as amended (except that the provisions of section 105 (a) thereof shall not be waived), and without regard to the provisions of section 105 of the Mutual Security Appropriation Act, 1957: *Provided further*, That obligations incurred in carrying out the purposes of the first sentence of section 2 of this joint resolution shall be paid only out of appropriations for military assistance, and obligations incurred in carrying out the purposes of the first section of this joint resolution shall be paid only out of appropriations other than those for military assistance. This authorization is in addition to other existing authorizations with respect to the use of such appropriations. None of the additional authorization contained in this section shall be used until fifteen days after the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committees on Appropriations of the Senate and the House of Representatives and, when military assistance is involved, the Committees on Armed Services of the Senate and the House of Representatives have been furnished a report showing the object of the proposed use, the country for the benefit of which such use is intended, and the particular appropriation or appropriations for carrying out the provisions of the Mutual Security Act of 1954, as amended, from which the funds are proposed to be derived: *Provided*, That funds available under this section during the balance of fiscal year 1957 shall, in the case of any such report submitted during the last fifteen days of the fiscal year, remain available for use under this section for the purposes stated in such report for a period of twenty days following the date of submission of such report. Nothing contained in this joint resolution shall be construed as itself authorizing the appropriation of additional funds for the purpose of carrying out the provisions of the first section or of the first sentence of section 2 of this joint resolution.

SEC. 4. The President should continue to furnish facilities and military assistance, within the provisions of applicable law and established policies, to the United Nations Emergency Force in the Middle East, with a view to maintaining the truce in that region.

SEC. 5. The President shall within the months of January and July of each year report to the Congress his action hereunder.

SEC. 6. This joint resolution shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

Approved March 9, 1957.

Maintenance of International Peace and Security in Southeast Asia

(P.L. 88-408, 78 Stat. 384, August 10, 1964 [H.J.Res. 11450])

P.L. 88-408, 78 Stat.—Joint Resolution, To promote the maintenance of international peace and security in southeast Asia.

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked the United States naval vessels lawfully

present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their won destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Approved August 10, 1964

Multinational Force in Lebanon

(P.L. 98-119, 97 Stat. 805, October 12, 1983 [S.J.Res. 159])

P.L. 98-119, 97 Stat. 805—Joint Resolution providing statutory authorization under the War Powers Resolution for continued United States participation in the multinational peacekeeping force in Lebanon in order to obtain withdrawal of all foreign forces from Lebanon.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This joint resolution may be cited as the “Multinational Force in Lebanon Resolution”.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the removal of all foreign forces from Lebanon is an essential United States foreign policy objective in the Middle East;

(2) in order to restore full control by the Government of Lebanon over its own territory, the United States is currently participating in the multinational peacekeeping force (hereafter in this resolution referred to as the “Multinational Force in Lebanon”) which was established in accordance with the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982;

(3) the Multinational Force in Lebanon better enables the Government of Lebanon to establish its unity, independence, and territorial integrity;

(4) progress toward national political reconciliation in Lebanon is necessary; and

(5) United States Armed Forces participating in the Multinational Force in Lebanon are now in hostilities requiring authorization of their continued presence under the War Powers Resolution.

(b) The Congress determines that the requirements of section 4(a)(1) of the War Powers Resolution became operative on August 29, 1983. Consistent with section 5(b) of the War Powers Resolution, the purpose of this joint resolution is to authorize the continued participation of the United States Armed forces in the Multinational Force in Lebanon.

(c) The Congress intends this joint resolution to constitute the necessary specific statutory authorization under the War Powers Resolution for continued participation by United States Armed Forces in the Multinational Force in Lebanon.

AUTHORIZATION FOR CONTINUED PARTICIPATION OF UNITED STATES ARMED FORCES IN THE MULTINATIONAL FORCE IN LEBANON

SEC. 3. The President is authorized, for purposes of section 5(b) of the War Powers Resolution, to continue participation by United States Armed Forces in the Multinational Force in Lebanon, subject to the provisions of section 6 of this joint resolution. Such participation shall be limited to performance of the functions, and shall be subject to the limitations, specified in the agreement establishing the Multinational Force in Lebanon as set forth in the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982, except that this shall not preclude such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon.

REPORTS TO THE CONGRESS

SEC. 4. As required by section 4(c) of the War Powers Resolution, the President shall report periodically to the Congress with respect to the situation in Lebanon, but in no event shall he report less often than once every three months. In addition to providing the information required by that section on the status, scope, and duration of hostilities involving the United States Armed Forces, such reports shall describe in detail—

(1) the activities being performed by the Multinational Force in Lebanon;

(2) the present composition of the Multinational Force in Lebanon, including a description of the responsibilities and deployment of the armed forces of each participating country;

(3) the results of efforts to reduce and eventually eliminate the Multinational Force in Lebanon;

(4) how continued United States participation in the Multinational Force in Lebanon is advancing United States foreign policy interests in the Middle East; and

(5) what progress has occurred toward national political reconciliation among all Lebanese groups.

STATEMENTS OF POLICY

SEC. 5. (a) The Congress declares that the participation of the armed forces of other countries in the Multinational Force in Lebanon is essential to maintain the international character of the peacekeeping function in Lebanon.

(b) The Congress believes that it should continue to be the policy of the United States to promote continuing discussions with Israel, Syria, and Lebanon with the objective of bringing about the withdrawal of all foreign troops from Lebanon and establishing an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area.

(c) It is the sense of the Congress that, not later than one year after the date of enactment of this joint resolution and at least once a year thereafter, the United States should discuss with the other members of the Security Council of the United Nations the establishment of a United Nations peacekeeping force to assume the responsibilities of the Multinational Force in Lebanon. An analysis of the implications of the response to such discussions for the continuation of the Multinational Force in Lebanon shall be included in the reports required under paragraph (3) of section 4 of this resolution.

DURATION OF AUTHORIZATION FOR UNITED STATES PARTICIPATION IN THE MULTINATIONAL FORCE IN LEBANON

SEC. 6. The participation of United States Armed Forces in the Multinational Force in Lebanon shall be authorized for purposes of the War Powers Resolution until the end of the eighteen-month period beginning on the date of enactment of this resolution unless the Congress extends such authorization, except that such authorization shall terminate sooner upon the occurrence of any one of the following:

(1) the withdrawal of all foreign forces from Lebanon, unless the President determines and certifies to the Congress that continued United States Armed Forces participation in the Multinational Force in Lebanon is required after such withdrawal in order to accomplish the purposes specified in the September 25, 1982, exchange of letters providing for the establishment of the Multinational Force in Lebanon; or

(2) the assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force in Lebanon; or

(3) the implementation of other effective security arrangements in the area; or

(4) the withdrawal of all other countries from participation in the Multinational Force in Lebanon.

INTERPRETATION OF THIS RESOLUTION

SEC. 7. (a) Nothing in this joint resolution shall preclude the President from withdrawing United States Armed Forces participation in the Multinational Force in Lebanon if circumstances warrant, and nothing in this joint resolution shall preclude the Congress by joint resolution from directing such a withdrawal.

(b) Nothing in this joint resolution modifies, limits or supersedes any provision of the War Powers Resolution or the requirement of section 4(a) of the Lebanon Emergency Assistance Act of 1983, relating to congressional authorization for any substantial expansion in the number or role of United States Armed Forces in Lebanon.

CONGRESSIONAL PRIORITY PROCEDURES FOR AMENDMENTS

SEC. 8. (a) Any joint resolution or bill introduced to amend or repeal this Act shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be. Such joint resolution or bill shall be considered by such committee within fifteen calendar days and may be reported out, together with its recommendations, unless such House shall otherwise determine pursuant to its rules.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by the yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by the yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to the respective Houses in disagreement.

Approved October 12, 1983.

Authorization of the Use of U.S. Armed Forces Pursuant to U.N. Security Council Resolution 678 with Respect to Iraq

(P.L. 102-1, 105 Stat. 3, January 14, 1991 [H.J.Res. 77])

P.L. 102-1, 105 Stat. 3--*To authorize the use of United States Armed Forces pursuant to United Nations Security Council Resolution 678.*

Whereas the Government of Iraq without provocation invaded and occupied the territory of Kuwait on August 2, 1990;

Whereas both the House of Representatives (in H.J.Res. 658 of the 101st Congress) and the Senate (in S.Con.Res. 147 of the 101st Congress) have condemned Iraq's invasion of Kuwait and declared their support for international action to reverse Iraq's aggression;

Whereas, Iraq's conventional, chemical, biological, and nuclear weapons and ballistic missile programs and its demonstrated willingness to use weapons of mass destruction pose a grave threat to world peace;

Whereas the international community has demanded that Iraq withdraw unconditionally and immediately from Kuwait and that Kuwait's independence and legitimate government be restored;

Whereas the United Nations Security Council repeatedly affirmed the inherent right of individual or collective self-defense in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the United Nations Charter;

Whereas, in the absence of full compliance by Iraq with its resolutions, the United Nations Security Council in Resolution 678 has authorized member states of the United Nations to use all necessary means after January 15, 1991, to uphold and implement all relevant Security Council resolutions and to restore international peace and security to the area; and

Whereas Iraq has persisted in its illegal occupation of, and brutal aggression against Kuwait: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force Against Iraq Resolution".

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) **AUTHORIZATION.**—The President is authorized, subject to subsection (b), to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677.

(b) **REQUIREMENT FOR DETERMINATION THAT USE OF MILITARY FORCE IS NECESSARY.**—Before exercising the authority granted in subsection (a), the President shall make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

(1) the United States has used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with the United Nations Security Council resolution cited in subsection (a); and

(2) that those efforts have not been and would not be successful in obtaining such compliance.

(c) **WAR POWERS RESOLUTION REQUIREMENTS.**--

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this resolution supersedes any requirement of the War Powers Resolution.

SEC. 3. REPORTS TO CONGRESS.

At least once every 60 days, the President shall submit to the Congress a summary on the status of efforts to obtain compliance by Iraq with the resolutions adopted by the United Nations Security Council in response to Iraq's aggression.

Approved January 14, 1991.

Authorization of the Use of U.S. Armed Forces Against Those Responsible for the Recent Attacks Launched Against the United States

(P.L. 107-40, 115 Stat. 224, September 18, 2001 [S. J. Res. 23])

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens, and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad, and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence, and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States,

Whereas the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE

This joint resolution may be cited as the “Authorization for Use of Military Force”

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES

(a) That the President is authorized 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.

(b) War Powers Resolution Requirements

(1) SPECIFIC STATUTORY AUTHORIZATION - Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS - Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001