WAR POWERS LEGISLATION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY POLICY AND SCIENTIFIC DEVELOPMENTS
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
FIRST SESSION
JUNE 1 AND 2, 1971

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To deal with all matters affecting our foreign relations that concern matters of national security and scientific developments affecting foreign policy, including the national space program, mutual defense and the operation of our high strategy generally.

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FOREWORD

This document contains the printed proceedings and contributed statements on a variety of bills and resolutions introduced into the 92d Congress affecting the war powers of Congress and the President.

The Subcommittee on National Security Policy and Scientific Developments held only 2 days of hearings on these proposals because of the extensive hearings it conducted in 1970 on the same subject.

Those hearings, printed under the title “Congress, the President and the War Powers,” resulted in full committee and House approval of a war powers resolution near the end of the 91st Congress. When the Senate failed to act, however, the resolution lapsed with the final adjournment of that Congress.

As chairman of the subcommittee, I reintroduced a slightly modified version of the House-passed resolution into the 92d Congress as House Joint Resolution 1. The text follows:

[HI. J. Res. 1, 92d Congress, first session]

JOINT RESOLUTION Concerning the war powers of the Congress and the President

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress reaffirms its powers under the Constitution to declare war. The Congress recognizes that the President in certain extraordinary and emergency circumstances has the authority to defend the United States and its citizens without specific prior authorization by the Congress.

Sec. 2. It is the sense of Congress that the President should seek appropriate consultation with the Congress before involving the Armed Forces of the United States in armed conflict, and should continue such consultation periodically during such armed conflict.

Sec. 3. In any case in which the President without specific prior authorization by the Congress—

(1) commits United States military forces to armed conflict;

(2) commits military forces equipped for combat to the territory, airspace, or waters of a foreign nation, except for deployments which relate solely to supply, repair, or training of United States forces, or for humanitarian or other peaceful purposes; or

(3) substantially enlarges military forces already located in a foreign nation;

the President shall submit promptly to the Speaker of the House of Representatives and to the President of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating his action;

(B) the constitutional, legislative, and treaty provisions under the authority of which he took such action, together with his reasons for not seeking specific prior congressional authorization; and

(C) the estimated scope of activities; and

(D) such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

Sec. 4. Nothing in this joint resolution is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties.

During the hearings recorded in this document, House Joint Resolution 1 was considered along with other war powers proposals. Once
again the subcommittee was convinced of the wisdom in the approach to the war powers issue embodied in House Joint Resolution 1. Thus, on June 8 the subcommittee voted to approve it without amendment for full committee action.

At the present time House Joint Resolution 1 is awaiting action before the House Committee on Foreign Affairs. Believing as I do in the practicality and effectiveness of that resolution, it is my hope that passage will be expeditiously accomplished by the Congress.

Clement J. Zablocki,
Chairman, Subcommittee on National Security Policy and Scientific Developments.
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WAR POWERS LEGISLATION

TUESDAY, JUNE 1, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON NATIONAL SECURITY
POLICY AND SCIENTIFIC DEVELOPMENTS,
Washington, D.C.

The subcommittee met at 2 p.m., in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the subcommittee) presiding.

BACKGROUND OF HEARINGS

Mr. ZABLOCKI. The subcommittee will please come to order.

Today the Subcommittee on National Security Policy and Scientific Developments opens 2 days of hearings on pending bills and resolutions concerning the war powers of Congress and the President.

Last summer this subcommittee held extensive hearings on war powers legislation. We took testimony from some 23 witnesses, including Members of Congress, private experts, and spokesmen for the executive branch.

As a result of those hearings, the subcommittee drafted a joint resolution on the war powers which was unanimously approved by the full House Foreign Affairs Committee and passed the House of Representatives on November 16, 1970, by a vote of 288 to 39.

Because of the failure of the Senate to act, that resolution lapsed with the end of the 91st Congress. A similar resolution has been introduced into the 92d Congress as House Joint Resolution 1.

That resolution and a number of other proposals which have been introduced on the subject of war powers will be considered during these hearings.

Because of the extensive hearings held last year, this series is to be limited to Members of Congress and representatives of the executive branch.

INTRODUCTION OF CONGRESSMAN FASCELL

Our first witness this afternoon is the Honorable Dante Fascell, a distinguished Member of Congress from Florida. It was he who introduced the war powers bill in the 91st Congress which resulted in the 1970 subcommittee hearings and the eventual passage of a resolution. Congressman Fascell participated actively in those hearings and in the sessions during which the subcommittee's resolution was drafted. He also was active during floor debate on the resolution.

No man in the Congress has done more than he to focus the attention of the Congress on the war powers issue in an effort to find a
means to insure future cooperation between the Congress and the President on behalf of our Nation.

Mr. Fascell, we are pleased to have you come before the subcommittee and look forward to your testimony.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Fascell. Thank you, Mr. Chairman, and members of the subcommittee.

It is a special privilege to once again testify before the National Security Policy Subcommittee on the war powers of the Congress and the President.

Thanks to you, Mr. Chairman, and to the other distinguished members of this subcommittee, much has happened in the last 11 months to clarify the respective responsibilities of the Congress and the President under the Constitution to initiate, to conduct, and to conclude armed hostilities with other nations.

One year ago, almost no one in the House of Representatives had drawn upon the experience of Vietnam to call for a basic reappraisal of the way this Nation involves itself in war. The Cambodian incursion which involved U.S. forces in combat without prior congressional consultation or authorization made clear to many more, myself included, the need for such a comprehensive review of the war powers of Congress and the President.

To serve as a vehicle for that reappraisal and as a catalyst to a discussion of this vital constitutional issue, I introduced a bill, H.R. 17598, on May 13, 1970, to define the authority of the President to intervene abroad or make war without the express consent of Congress. The bill gathered a significant number of cosponsors and a fair amount of attention—some friendly, and some otherwise, as had been intended.

BILL ACHIEVED REAL PURPOSE

But, Mr. Chairman, the bill achieved its real purpose—a full discussion of the many delicate constitutional and practical issues involved—when you, with your characteristic generosity and responsiveness, agreed to hold hearings.

And hold them you did—from June 18 to August 5 last year. Mr. Chairman, I can hardly say enough in praise of you, the members of the subcommittee, and your able staff consultant, Mr. Jack Sullivan, for the comprehensive manner in which you have approached this most complex and delicate subject. The hearings were among the most carefully structured and thorough it has been my privilege to attend. And, I might add—that the full attendance of subcommittee members, and many members of the full committee reflected the importance of the subject.

Out of those hearings came a consensus about how to begin to restore a proper constitutional balance between Congress and the President and a joint resolution based on that consensus. That resolution passed the House overwhelmingly last fall, but died when the Senate failed to act. The same resolution, slightly modified, House Joint Resolution 1, is again pending before the subcommittee. I fully supported the resolution last year, and I wholeheartedly endorse it again this year.
But, Mr. Chairman, if I thought that the only thing that had come out of last year's hearings was House Joint Resolution 1, I would oppose it. For we cannot delude ourselves that one bill—or a series of bills—will by themselves give this Nation the kind of control over how we go to war that we need. House Joint Resolution 1 is an important first step toward reestablishing necessary congressional authority in the area, and it should become law, but by itself it is not enough. What is needed is a whole network of mechanisms, but, most of all, of attitudes which will insure:

That American soldiers will never die unless it is absolutely necessary;
That this Nation will never again go to war bit-by-bit with a minimum of consideration;
That if we must ever go to war again, it will be only with the deep and widespread understanding and support of the American people; and

That never again will the only choice we have to counter indirect aggression and subversion be U.S. military intervention.

Mr. Chairman, let me elaborate for just one moment on this last point. Clearly, when an ally is attacked overtly and in large numbers, we will probably have no alternative but direct involvement. But short of that kind of aggression, when we get to the point where the only way we can keep an important nation friendly is military intervention, then our policy has failed. If we are to avoid future Vietnams, then we in the free world must evolve nonmilitary policies to counter subversion, but most importantly we must develop imaginative and constructive ways of thinking about these problems. Only by building in alternative approaches can we avoid getting locked into situations which are doomed to escalation, because both sides have locked their thinking onto only one possible course of action and reaction.

1970 WAR POWERS HEARINGS CHANGED ATTITUDES

Mr. Chairman, perhaps the most important thing which came out of last year's hearings was just such a change in attitudes. For the hearings, along with last year's Senate and House debates, produced a widespread public discussion of the war powers. This discussion led to a change in attitude which this year has seen renewed and wider interest in the subject in the House, including a number of resolutions including one by my colleague from Florida, initiation of hearings for the first time in the Senate, and support for war powers legislation by the chairman of the Senate Armed Services Committee. Clearly, we have come a long way, but just as surely we have a long way to go before we can feel secure in the knowledge that we have done all we can to be certain that the vast military forces we have created are subject to the fullest possible restraints of reason.

The place to begin to prevent our needless involvement in future wars, Mr. Chairman, is right here in Congress, right here in this subcommittee. Not simply by passing more laws, though some like House Joint Resolution 1 and perhaps other stronger ones are needed, but by insisting that present laws are carried out; by asserting the constitutional prerogatives and powers that are already ours.
Ultimately, the accountability of both the President and the Congress is up to the people. They are the ultimate check, but in the meantime it is up to both our branches, executive and legislative, to constantly question each other on the policies of either branch which might lead to that most solemn of all governmental decisions, war. Hopefully, this constant questioning can take place through agreed-upon arrangements so that the President and Congress can work together as urged in the subcommittee’s report last year, “in mutual respect and maximum harmony toward their ultimate, shared goal of maintaining the peace and security of the Nation.” But take place it must—whether in a spirit of consultation or otherwise.

NO SUBSTITUTE FOR CONGRESSIONAL REVIEW

For our part here on the Foreign Affairs Committee, there can be no substitute for systematic and periodic congressional review of exactly where and under what conditions and to what extent the United States is and should be willing to fight in any particular instance. The recent substantial increase in the committee’s staff should help toward accomplishing the goal, but I would hope the committee would also take steps to institutionalize procedures insuring such a review. In addition, regardless of a Presidential report, we must provide for prompt consideration of crisis situations as they arise to insure congressional participation in the decisionmaking process.

JORDAN CRISIS: NO CONGRESSIONAL CONSULTATION

Let me be specific. Last year, during the strife in Jordan, consideration was given to sending in U.S. forces. There was time for full, though perhaps secret, congressional consultation. There was none. Why? We could have gotten into a very major war. But that is not the point. Congress should have been thoroughly consulted and authorization sought in advance of sending troops in.

Mr. Chairman, in 1941, Walter Lippmann wrote of this “gray area” of executive and legislative relations: “This difficulty can be resolved, but only by the display of self-restraint, objectivity of mind and magnanimity which are rare in public life.”

For our part, Mr. Chairman, you and this subcommittee have shown that the Congress can and will show this kind of an attitude in restoring the proper balance between necessary Presidential flexibility and essential congressional control.

I most recently again learned, in the somewhat arbitrary and unannounced waiver of the congressional limitation on arms sales to Latin America, that the Executive has not yet come to share the point of view that “consultation, common counsel and continuing accountability” are essential to viable foreign and defense policies. Through your efforts and those of others in the Congress, I am hopeful that both the Executive and the Congress will have a new understanding of the relationship of one to the other, and that from this can flow more thoughtful and reasonable policies minimizing the risks of unnecessary war.

Thank you, Mr. Chairman.

Mr. Zablocki. Thank you, Mr. Fasell, for an excellent statement.
I particularly take comfort in the quote of Mr. Lippmann. I am sure when he refers to those characteristics that are rare in public life he also includes newspapermen.

**IS A STRONGER RESOLUTION NEEDED?**

Seriously, however, I want to ask you about your preference for strengthening House Joint Resolution 1. You do mention on page 3, and again further on in your statement, that it would be desirable to have a stronger resolution than House Joint Resolution 1.

**Mr. FASCELL.** I said it might be necessary, Mr. Chairman.

**Mr. ZABLOCKI.** That is right. The point, however, is that we could have a very strong wording in a resolution which would not become law, through a simple House or Senate resolution. Or we could attempt to pass a resolution seeking cooperation between the executive and the legislative which would be acceptable to both and be made part of the law, and to that extent, clarify the gray area in the Constitution.

Which, in your opinion, would be preferable?

**Mr. FASCELL.** Mr. Chairman, the point you make is a very valid point in my judgment and one not to be dismissed lightly. I think it would be adding to the problem, let us put it this way, if we passed a simple House resolution or Senate resolution or a concurrent resolution, no matter how strong it is, because, after all, it takes the announced and practiced intention on the part of the Executive to make this thing work.

Therefore, I think it is extremely important to submit for the Executive signature whatever is passed by the Congress.

**Mr. ZABLOCKI.** As the gentleman well knows because he worked with the subcommittee, there was, was there not, a definite tacit understanding about the resolution that we worked on, that it would indeed be very likely that the signature of the President would be appended?

**Mr. FASCELL.** I got that impression, Mr. Chairman. You did work very closely with the administration. After all, that is part of the concept in establishing the policy. It seems to me that this is the first step. I don't know how else you can change the attitude or the policy or how you can even begin to institutionalize it unless it does become a matter of law with the agreement of the Executive that it will be fully implemented.

**Mr. ZABLOCKI.** Therefore, I would definitely appreciate, my colleague—and I value your counsel and your wisdom in this area—if it might be necessary to have a more strongly worded resolution, just what would you include?

**Mr. FASCELL.** Mr. Chairman, I had not given any detailed thought to that. You have many suggestions which might be incorporated. I have just seen this chart which is an excellent means of comparison, by the way, of all the resolutions pending. There might be some better way, for example, to institutionalize the arrangement. I don't know. I haven't given it that specific consideration.

**ANNUAL AUTHORIZATION FOR STATE DEPARTMENT**

**Mr. ZABLOCKI.** As you well know, in the other body the chairman of the Foreign Relations Committee has introduced a proposal which would provide annual authorization for operating funds of the State Department and USIA.
Would you favor such legislation as a means of obtaining greater influence for Congress, increased influence on foreign policy and national security decisions?

Mr. FASCELL. I do not quite follow that, frankly. It is kind of like the ball-bat approach. I do not see how you can work on administrative funds to influence policy because the ultimate threat is that you are going to shut down the Department if they don't do what you want to do. I don't see that as a satisfactory answer. It might be useful.

Mr. ZABLOCKI. As a threat?

Mr. FASCELL. Yes. But it is not the kind of thing we are talking about here where you have divided powers under the Constitution, particularly with respect to the issue of war.

On the other minor things, I don't think there is any question how effective it would be to hold back their funds for administering the Department. I think you could get all kinds of agreement out of that.

Mr. ZABLOCKI. Thank you very much, particularly for that last observation.

Mr. FINDLEY. Mr. Fascell, I want to join the chairman in congratulating you on the early initiative you made about a year ago and on your statement here today.

Mr. FASCELL. I thank you. It is certainly no earlier than yours because you were one of the first in this area.

APPLICATION OF RESOLUTION TO LAOS INVASION

Mr. FINDLEY. As I have discussed this proposal with constituents and people elsewhere, they have raised the question as to how the enactment of House Joint Resolution 1 would change the situation that prevails today. If we take the introduction of our airpower into Laos earlier this year, I think we have a case in point, do we not?

Mr. FASCELL. Yes.

Mr. FINDLEY. As of that date, the Tonkin resolution had been repealed by the Congress, so the President could not draw upon that document as his authority for military action over Laos. But, as I understand House Joint Resolution 1, had it been on the books, the President would have had the obligation within a very few days to present in writing a report to the Congress stating the factors that caused him to take this action and citing his legal, constitutional, and treaty authority for so acting.

Mr. FASCELL. The gentleman cites a very specific case of the application of the resolution. There is no question about it.

Mr. FINDLEY. I think it is quite possible that this report would be received and filed, but at least the President would have placed before the Congress, and this subcommittee, a very important report concerning military action that he had taken. It would then be the burden of the Congress to take a look at that report, perhaps hold hearings on it, and if it deemed advisable, pass judgment upon whether or not the President acted properly.

Mr. FASCELL. The gentleman from Illinois is quite correct, because what it does, you see, is institutionalize the recognition of the role of the Congress. Up to now, this has been set in precedent as a kind of
arm's-length proposition; sometimes it works well and sometimes it does not work at all.

Here we would have the opportunity by law to institutionalize at least that aspect of it.

It seems to me that is worthy of accomplishment.

Mr. FINDLEY. It would establish a formal relationship between the President and the Congress in respect to war powers where no such relationship exists today.

Mr. FASCCELL. Except by precedent, practice, and procedure.

COMMENTS ON THE JAVITS PROPOSAL

Mr. FINDLEY. The Senate committee seems to have pretty well embraced the Javits' approach, which seeks to define the reserve powers of the President and to set a 30-day time limit on the President in using military force under these reserve powers.

Do you have any comments on the Javits' approach?

Mr. FASCCELL. Yes, I do. The objective, of course, is laudable, but, when one extends the application of that requirement one can foresee a fantastic amount of difficulty, it seems to me.

Mr. FINDLEY. Could you illustrate that point?

Mr. FASCCELL. For example, the President commits troops abroad in an engagement. Now, under the requirement in 30 days, if Congress does not act, the President must automatically terminate—is that my understanding of the language?

Mr. FINDLEY. That is the way I read it.

But the question comes to my mind whether he could really escape his constitutional responsibility because Congress passed the law.

Mr. FASCCELL. Of course he could not. I don't see how he could comply with that. That is No. 1.

If he is in that kind of serious situation, he would say, "Under my right and obligation and authority under the Constitution, I am going to ignore that provision," period. That is all there is to that.

What is the enforcement? The alternative is impeachment. A direct confrontation with the Executive on that kind of issue seems to me to be of little value to us at the time of some emergency, at least an emergency which the President in his judgment has seen fit to commit the Nation to. That is problem No. 1.

Problem No. 2: Supposing we are in this subcommittee and the Nation has been committed to war by the Executive? Are we at the end of 30 days going to just say, "Well, that is the end of that."

By doing nothing, we force him to quit. Suppose, however, we hold hearings within the 30-day period, and then we act affirmatively? In other words, are we forced to ratify the action? What would be the end result?

I don't know, but my experience tells me that when the Executive is that serious in the commitment of the Nation to war the Congress is pretty much apt to follow that commitment.

HISTORY OF CONGRESS AND WAR DECLARATIONS

Mr. FINDLEY. In our history has there ever been a circumstance in which the Congress failed to respond to a Presidential request for a war declaration or an instrumentality of similar sort?
Mr. FASCCELL. Not that I can recall. As a matter of fact, as we all know, there are various ways of doing it without putting the Congress and the Executive in direct confrontation in that period of time. For example, we still have the constitutional control over the expenditure of funds where there is no constitutional conflict there whatever. But I am afraid just on the policy decision, which is where this resolution stops, this would then present a different problem entirely.

Besides that, you would have different committees involved. I am thinking of the leadership we would have to have in the followup of this issue on the floor.

In one case, you would have the Foreign Affairs Committee on strictly a policy question. In another case, you would have Armed Services, and Appropriations on the followup question.

Which would prevail?

In the final analysis, you know, if you have the votes you win. If you don't have the votes, it makes no difference what you said in the committee. That is the problem I see with that. In other words, it seeks to put an element of enforcement which actually doesn't exist in the final analysis and it could become an instrument of automatic ratification.

Mr. FINDLEY, Thank you, Mr. Chairman.

Mr. ZABLOCKI. Mr. Bingham?

A PROPOSAL BY MR. BINGHAM

Mr. BINGHAM. Thank you, Mr. Chairman.

I would like to say that, as usual, I find myself in substantial agreement with everything the gentleman from Florida has said. I, too, feel that House Joint Resolution 1 does not go far enough. I have some proposals to make that would add to the authority to require the President to terminate a military action that he had commenced without a declaration of war.

Mr. FASCCELL. Will the gentleman yield at that point?

I am sorry to say that I haven't read his bill, but I shall, particularly on that point.

Do I understand that you bring all other actions by the President except in case of a declaration of war by the Congress—

Mr. BINGHAM. As a matter of fact, I have submitted today a new bill which departs somewhat from the bill I introduced last year and earlier this year because I came to the conclusion that it was dangerous to try to spell out the conditions under which the President can move without the authority of the Congress. So, in my new proposal, I skipped all of that and simply state that in the event the President has initiated hostilities, that his authority to continue those hostilities could be terminated by action of either House in opposition. This seems to me to meet the gentleman's point, which I share, that the 30-day limitation is arbitrary, it may take place at a time when the Congress is stirred up and emotionally involved in the beginning of the action.

It is also arbitrary as to time. Thirty days from when might be a very difficult case to determine.

The theory of my resolution is that the President should be able to carry on this type of hostility only if he has at least tacit approval of both Houses of Congress, and giving either House the authority to
terminate his authority would be a much sharper tool to use than what we have now which is the funding tool.

Mr. FASCELL. I think I follow the general thrust of the gentleman's legislation.

POWER OF CONGRESS IN AN UNDECLARED WAR

The question always arises, you see, with this, unfortunately, as to whether we can in the Congress by legislative act, terminate the constitutional authority of the President. This is the $64 question. We can't resolve it in the Supreme Court and we can't get away from the enforcement process in terms of impeachment of the President. By that time, the hostilities would be over, you know.

Mr. ZABLOCKI. Isn't it a part of the problem that the President would not sign such a proposal, that it would not become law?

Mr. FASCELL. I don't know about that. I didn't mean to be critical of the gentleman's proposal because he has given a lot of thought and effort to this issue. I just say that all of us who are involved in this thought process come up constantly against the proposition of how we can legislate against an enunciated constitutional prerogative of the Executive.

The answer is that you can't.

Mr. BINGHAM. But the gentleman would agree, I would think, that this idea of the degree to which the President has the constitutional authority to carry on war without a declaration is a very fuzzy area indeed in constitutional law.

Mr. FASCCELL. Agreed.

Mr. BINGHAM. It is not at all clear that the President has that constitutional authority. So within that muddy area, I would think the Congress has a right to legislate.

Mr. FASCELL. It sounds like a good base for a beginning.

IMPORTANCE OF PRESIDENTIAL AGREEMENT

Mr. BINGHAM. May I just say in response to the chairman's comment, and I think the gentleman would agree, it is our responsibility as Members of the Congress to propose what we think is right and we should not be deterred by what the President might or might not sign, particularly since the present President will not permanently be in office and there may be another President who might sign such a resolution.

Mr. FASCELL. At least while it is a factor to be considered, I certainly would agree with the gentleman from New York that we ought to carry out our responsibility as we see it.

What has been going on for the last 11 or 12 months with respect to this issue is nothing but good and healthy. We have involved a lot of people and there is a great deal more interest in the whole subject matter. We may not satisfactorily resolve it even in this session of Congress but we made a healthy start.

I think that is good, and I compliment all of the members of the subcommittee for their attention to this subject.

Mr. BINGHAM. I would like to say in conclusion that I hope the gentleman will think further about in what degree House Joint Resolution 669 is incomplete and insufficient and what ought to be added to it by way of amendment.
Mr. FASCCELL. I assure you I will review your latest proposal most carefully.

NEED FOR PRAGMATIC APPROACH

Mr. ZABLOCKI. Will the gentleman yield for a comment?

Mr. BINGHAM. Surely.

Mr. ZABLOCKI. I cannot help but quote Walter Lippmann, as you quoted in your statement:

That this area where there is such great difficulty can be resolved only by the display of self-restraint, objectivity of mind and magnanimity.

Mr. FASCCELL. Yes; but he means on both sides, Mr. Chairman.

Mr. ZABLOCKI. If we are going to be pragmatic about this and if we want something on the statute books, if we are going to really and truly carry out our responsibility, we must do something that is feasible or possible. We cannot wait on the next President or the President after that. We must do the best we can and get the most practical language. We don't want to bring about defeat before we get started.

Mr. FASCCELL. To the gentleman from New York, I think I would like to say that I think this is an important consideration, that we can make a step, even though it may be a faltering step, in this area. I do believe it is essential, however, to submit the proposition to the Chief Executive, I think that is vital.

Otherwise, we leave ourselves strictly in the area of constant confrontation between the legislative and Executive and while each of us charged with carrying out our responsibilities under the Constitution won't shirk from doing that, we will not really have achieved that spirit of purpose here in dealing with a most difficult and sensitive issue of war.

TACTICS FOR PASSING RESOLUTION

Mr. BINGHAM. Could I comment further?

I think that what the chairman says and what the gentleman from Florida says does make sense, that it might be desirable to pass House Joint Resolution 669 as it is in the hope of getting the approval of the President if it were adopted. That would be a step forward, there is no question about that.

But I still think that it is appropriate for this subcommittee or the Congress as a whole to give thought to the other question whether or not there should be legislative restraint on the President.

Seriously, we have a number of candidates for President who are currently in the Congress. If they were to commit themselves to one of these proposals and were then to be elected, presumably they would sign such a resolution.

Mr. FASCCELL. That is a good point.

Mr. ZABLOCKI. I think that is wishful thinking.

Mr. MORSE?

HAS CONGRESS BEEN POWERLESS TO ACT ON VIETNAM?

Mr. MORSE. Thank you, Mr. Chairman.

Mr. FASCCELL, as one who is a new member of this subcommittee I have not been involved in this issue, so I am not nearly as well informed as my colleagues who are closer to the center of the subcommittee. But I do have a couple of questions that I would like to raise.
The first is an observation. I think it has become part of the public rhetoric in recent years because of our frustration about Vietnam, that the Congress has been powerless to act throughout the U.S. involvement in Southeast Asia.

Mr. FASCELL. It is often said but, of course, not true.

Mr. Morse. Which is not true. It has not been a matter of power; it has been a matter of will. The Congress has not had a will to act. I think perhaps we mislead the American people when we talk about insufficient power. Now, I think your testimony clearly implies, and I agree, that by this resolution the Congress could not enlarge its own constitutional powers nor could we intrude upon the constitutional powers of the President. But as Mr. Bingham points out, it is a proper thing for us to seek to define with greater clarity the area of the President's constitutional authority. How would you think that House Joint Resolution 1 or any of the other resolutions which are before the subcommittee do enlarge congressional powers?

Mr. FASCELL. I don't see any enlargement of congressional power, Mr. Morse, at all. All I see is simply a formalizing of an arrangement and acknowledgement and recognition of the powers that do already exist.

SITUATION DEMANDS LEGISLATIVE FORMALIZING.

Mr. Morse. In other words, you think that if the degree of congeniality between the executive and legislative branches that Walter Lippmann spoke of were to exist, we wouldn't need this kind of legislation?

Mr. FASCELL. Well, I would say that given the speed and complexity of international problems as they exist today and as far as we can see in the future, I think we are going to have to insist on legislatively formalizing the relationship between the Executive and the legislative branch.

Up until now, it has been strictly a desire and willingness, whether it be political or genuine in the sense that it had no political motive, whatever the motive, carrying out the responsibility as the Chief Executive or the Commander in Chief. It has strictly been one that is at will, subject to getting the program through Congress or satisfying the Armed Services Committee or the Appropriations Committee, or whatever the case might be.

As a matter of fact, I think that has been a kind of weak reed in terms of the policy committee; namely, Foreign Affairs. Because, if that were the criteria, then the only real fulcrum we would have would be the authorization of the aid program, which is no fulcrum at all.

So, then, you get down to the ultimate, how do you affect policy?

Mr. Morse. Thank you very much, Mr. Chairman.

Thank you, Mr. Fascell.

Mr. ZABLOCKI. Mr. Findley!

MEANING OF TERM: "PROMPTLY"

Mr. FINDLEY. Mr. Fascell, House Joint Resolution 1 has the word "promptly" in section 3, which provides "The President shall submit promptly to the Speaker of the House and the President of the Senate this report."
For purposes of legislative history, how would you define the word "promptly"?

Mr. FASCHELL. Mr. Findley, I certainly would say, not less than 24 hours and not more than several days, whatever that would be. It is a question of reasonableness again.

As I recall it, the subcommittee purposely stayed out of that kind of definition, recognizing the pressures on the Chief Executive to meet a deadline, by the same token making clear that we didn't want to have the thing dragged out until it was meaningless.

Mr. FINDLEY. I think one of the purposes behind this bill is to cause the Chief Executive and his advisers to take into account at a very early stage in their decisionmaking process this reporting requirement.

Mr. FASCHELL. Certainly.

Mr. FINDLEY. The necessity to give a legal justification so that it won't be an after-the-fact exercise by third- or fourth-level lawyers in the State Department.

Mr. FASCHELL. I agree.

If I were going to fix a time, myself, and be stuck with it, so to speak, I would say not less than 24 or more than 72.

Mr. FINDLEY. In other words, within 3 days at the most of the commitment.

Mr. FASCHELL. Of the commitment.

Mr. ZABLOCKI. Mr. Bingham?

Mr. BINGHAM. I have no further questions.

Mr. ZABLOCKI. Again, our sincere thanks. We look forward to having your wise counsel and advice when we mark up the bill.

Mr. FASCHELL. Thank you, Mr. Chairman.

INTRODUCTION OF CONGRESSMAN BINGHAM

Mr. ZABLOCKI. Our next witness this afternoon is the Honorable Jonathan B. Bingham of New York, a valuable member of this subcommittee who has done considerable work in the matter of war powers legislation. He is the author of H.R. 4194, a bill to limit the authority of the President to intervene abroad or to make war without the express consent of Congress.

Mr. Bingham, you may proceed.

STATEMENT OF HON. JONATHAN B. BINGHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BINGHAM. Thank you, Mr. Chairman, and members of the subcommittee.

I appreciate this opportunity, Mr. Chairman, to present some further views on the crucial matter of Presidential and congressional authority to engage in hostile foreign action in the absence of a declaration of war. You and the members of this subcommittee may recall that I was a sponsor in the 91st Congress of H.R. 18539, a bill to limit the warraking authority of the President, and that I testified on that legislation before this subcommittee last July. H.R. 18539 has been reintroduced in this Congress as H.R. 4194.

Since that time, there has been a great deal of further discussion and legislative action on this matter. The House passed House Joint Resolution 1355 on November 16, 1970. The Senate failed to act on that or
similar legislation in the 91st Congress. This discussion has raised nagging doubts in my mind about some of the provisions that are being given serious consideration by the Congress, particularly in the Senate, and the American public, and has changed my thinking in several respects. As a member of this subcommittee, I look forward to the opportunity to pursue some of these issues in the course of questioning witnesses in these hearings, so I will not spend a great deal of time on them here. I do want to point out to the subcommittee at the outset, however, several conclusions I have reached which may be of interest.

FUTILE TO PRESCRIBE WAR CIRCUMSTANCES

First, I am forced to conclude that it is quite futile and unwise to attempt specifically to prescribe the circumstances under which the President may engage in hostilities in the absence of a declaration of war. If the criteria stated are sufficiently broad, they amount to no restraint at all. This is especially true since successive Presidents have shown themselves quite capable of interpreting congressional prescriptions to suit their own needs and to justify their actions. Surely, the Gulf of Tonkin resolution is a striking illustration. Highly restrictive criteria, on the other hand, could interfere with the President's capacity for quick, flexible response under circumstances that could prove tragic. The Javits bill, which I understand has been introduced by Congressman Tiemann, H.R. 4673, for example, in my view, would have inhibited or prevented President Truman from responding as he did to the invasion of South Korea. Similarly, the Javits bill could make it difficult for a President to respond adequately to a sudden Soviet-Arab attack in the Middle East.

I believe, with respect to the Javits bill, that in testimony before the Senate Foreign Relations Committee, Senator Javits said that in such a case if there were an invasion of Israel, the President could use the paragraph in his bill which refers to the necessity to protect the lives and property of U.S. nationals abroad.

Now, that illustrates my point. I think that would be a twisting of the purpose of that phrase.

It illustrates the point that an ingenuous mind can find an excuse under almost any set of criteria for doing what he wants to do.

So, it seems to me that any effort to prescribe circumstances in which the President is authorized to deploy combat forces is destined to fail either by imposing, in effect, no real restraint on the President or too much.

"30-DAY" PROVISION ILL-ADVISED

Second, it is my judgment that any deadline on Presidential or congressional action is ill-advised and probably unworkable. The 30-day provision of the Javits bill and the bill introduced by Congressman Chappell, with diverse cosponsorship, and very interesting cosponsorship, I might say, Mr. Chairman, after which Presidential action would have to be terminated unless continued by Congress, could well force the Congress into a premature decision or terminate Presidential action before a full assessment could be made of the situation.

This is precisely the point which was made earlier by Congressman Fascell.
Similarly, any time limit is likely to be arbitrary and none can hope to suit every circumstance. There is also the procedural problem of determining when the specified time period commences. To base a time limit on a Presidential report of troop deployment has grave drawbacks. As recent experience indicates, Presidents can be slow to report to Congress, especially when foreign involvement occurs gradually, rather than through decisive action. How long after we became involved in Vietnam, for example, did the Congress receive a clear report of that fact from the President? When would we have started counting off 30 days with regard to our Vietnam involvement?

If we look at the wording of the Javits bill, and I am looking at the Tiernan bill, he refers to the “initiation of military hostilities under circumstances described in paragraph (a).”

Now, under that language, we would be hard put to say when we initiated military hostilities in Vietnam.

Indeed, if we were referring to something like the recent escalation of the war in Laos, it would also be difficult because we had initiated military hostilities of a sort over Laos a long time before that.

So, such questions seem to me to raise serious doubts about the practicability of any time limit on Presidential intervention.

**Problem of “Blank Check” to President**

Third, I believe Congress should not be placed in a position where it must act in order for Presidential action to continue. If the Congress does act, then the President receives a blank check to proceed as he sees fit from there on out, and the Congress is all too likely to be swept up in the enthusiasm of the moment, giving the President authority that it might later regret having given. Again, our dismal experience under the Tonkin resolution should be a warning. Rather, the responsibility and authority which the Congress now has—through the “power of the purse”—to restrict or terminate Presidential action should be spelled out clearly. What is now a blunt and awkward tool should be sharpened so that it can be used with more precision.

My conclusion from all this is that the authority to carry on hostilities in the absence of a declaration of war should continue only so long as the President has at least tacit approval of both Houses of Congress; in other words, either House, acting alone, should be able to “blow the whistle” on the President. Each House fully represents the American public, and the first body to reach a majority in opposition to Presidential action should be able to terminate it. There is clear precedent for such an approach in the Executive Reorganization Act, which stipulates that rejection by either House of the Congress is sufficient to kill a Presidential effort to reorganize the executive branch.

And, of course, any exercise of the power of the purse has to be approved by both Houses of Congress. So, lacking the approval of both Houses should be an indication that the President's authority is being exercised in a way that is, to say the least, sufficiently questionable so that it ought to be terminated.

**New Ringham Resolution: House Joint Resolution 669**

With these thoughts in mind, Mr. Chairman, I have today introduced a modified version of the legislation I introduced in the last Congress—
House Joint Resolution 669. I have exercised my prerogative to change my mind, as you can see.

This proposed joint resolution reads as follows:

HOUSE JOINT RESOLUTION 669

To limit the authority of the President of the United States to intervene abroad or to make war in the absence of a congressional declaration of war.

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That use of the Armed Forces of the United States in military hostilities outside the territory of the United States in the absence of a declaration of war shall be unlawful following the adoption by either House of the Congress of a resolution disapproving continuation of such use. Any such resolution of disapproval shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it originates, be considered reported to the floor of such House no later than one day following its introduction, unless the Members of such House otherwise determine by yeas and nays. Any resolution so reported shall immediately become the pending business of the House to which it is reported, and shall be voted upon within three days after such report, unless such House shall otherwise determine by yeas and nays.

Upon the adoption of any such resolution of disapproval, the President shall proceed at once to effectuate the immediate withdrawal to the United States or any territory subject to its jurisdiction of the United States forces involved, having due regard to the need to protect such forces from attack while in the process of withdrawal.

I would like to add on this, Mr. Chairman, to make clear that I am not opposed to House Joint Resolution 1 in its present form and indeed would support its adoption.

My resolution is drawn in such a way that it could be added as an amendment, additional section to House Joint Resolution 1, or it could be reported separately to the House for action as a separate joint resolution.

Thank you, Mr. Chairman.

THE BINGHAM RESOLUTION AND HOUSE PROCEDURES

Mr. Zablocki. Thank you, Mr. Bingham. As usual, your statement is very helpful and well thought out. Personally, I want to fully agree with your observations on the Javits proposal, in particular, the portion of the Javits proposal which deals with the time limitation.

I have a question, however, on your resolution that you introduced just today. You actually often circumvent the House procedure of resolutions coming before the House for consideration when you say, "Any such resolution of disapproval shall, if sponsored or cosponsored by one-third of the Members of the House in which it originates, be considered reported." That would preclude any hearings, any action of the subcommittee, if just one-third of the membership could discharge a petition, a bill, or resolution for consideration of the House.

How do you square that with your fear of the Javits proposal? On page 2 of your statement you say the Congress is all too likely to be swept up in the enthusiasm of the moment. You find some fault with that proposal in the Javits resolution. Apparently you are not concerned if even one-third of the Members, which could very well, as you stated in your statement, be swept up in the enthusiasm of the moment, sponsor or cosponsor a disapproval resolution.

How do you?
Mr. BINGHAM. First, with regard to committee jurisdiction, the section does say, "unless the Members of the House otherwise determine by yeas and nays."

The purpose of this wording is to assure that in the event of a majority of the House or of the Senate being of a mind to terminate the authority, that they would have that opportunity and could not be blocked by a filibuster. This language is essentially the same as that provided in Senator Javits' proposal to avoid the possibility of a filibuster. Under the provision that Members of the House could determine otherwise by yeas and nays, it seems to me it might quite well be that the Members of the House would vote by yeas and nays to refer the bill or resolution to the appropriate committee and ask for a report back within a certain length of time. But the purpose of that language is to prevent the possibility of a filibuster.

We have our ways, the Senate has its ways. We also have ways of filibustering.

FEAR OF ACTION ON MOMENT'S ENTHUSIASM

The second part of the chairman's question has to do with my possible fear of action in the enthusiasm of the moment. I think it is far less likely, in fact not something to be feared, that the Congress or one House thereof would express disapproval of Presidential action. I think that in the nature of things and human nature being what it is, in the early stages of a military involvement there is likely to be considerable enthusiasm and hoopla about it all, and I think that was indicated in the case of Vietnam.

What I am saying here is, and what this provision would provide is that if the majority of the Members of either House are prepared to vote to terminate the authority of the President, they should have that opportunity and that authority should then terminate.

QUESTIONS PROCEDURES FOR ACTION

Mr. ZABLOCKI. I still am not very clear about the provision "unless the Members of such House otherwise determine by yeas and nays."

The bill would have to be reported and indeed your resolution provides for it to be considered reported to the floor and then your yea and nay vote would be as a matter of action on the agenda. There is no expression on the part of the Members by a yea or nay vote whether it should be reported or not.

Mr. BINGHAM. This language preserves the right of the majority of the House or of the Senate in either case to work its will. If the majority of the House or the Senate wishes to have a committee study and a committee report, then under the terms of this they could have it, but the right of the majority to work its will would be preserved and would be assured and that right could not be prevented by the action of a minority.

What troubles me about filibusters is that it is the action of a minority imposing its will on the majority.

Mr. ZABLOCKI. If your proposal became law, the resolution introduced this afternoon could be considered on the floor tomorrow.

Mr. BINGHAM. That is right, provided that one-third of the Members cosponsored it.
Mr. ZABLOCKI. Do you think that procedure adds to the democratic process? Is not full consideration of such highly sensitive legislation as we are today considering helpful and warranted?

Mr. BINGHAM. I think in a case of that importance the majority of the House should be able to determine whether it is prepared to vote and vote if it so desired or to have further study given to the proposition. But the majority of the House would be in control and not the leadership, not any committee, not any minority. The majority of the House would be in a position to work its will.

Mr. ZABLOCKI. I have gathered from your last comment in your statement that indeed House Joint Resolution 1 you fully agree with in its present form; for example, you are not opposed to having the President keep Congress informed or that he report.

Mr. BINNHAM. Absolutely not.

Mr. ZABLOCKI. Your proposal is intended to be an addition.

Mr. BINGHAM. That is right.

Mr. ZABLOCKI. I have no further questions.

Mr. Findley!

Problem of "Glandular Reaction"

Mr. FINDLEY. Mr. Bingham, I think we are all indebted to you for a very imaginative proposal and one which I think deserves very careful examination.

I share the concern of the chairman about the swiftness with which the resolution might be brought to a vote.

There comes to mind the almost glandular reaction that occurred in this country after the conviction of Lieutenant Calley. I have an idea that if a similar procedure had been available, the Congress might have voted him the Congressional Medal of Honor the day after his conviction, so lopsided and emotional was the reaction.

Yet I think the attitude of the American people as well as the Congress has considerably changed. I know that minority tactics can be oppressive and thwart the will of the majority, but I think it is also fair to quote the Parliamentarian, Lew Deschler, that there is always a way for a determined majority to work its will.

I would be constrained to modify at least those portions of your resolution to make possible a more deliberate consideration by the Congress. The Congress has been referred to as a study and deliberative body; rather than an action body. I think that definition has some merit.

Problem of Future Constitutional Confrontation

The other comment I would make, Mr. Bingham, is that inevitably the provisions of your bill would lead to a constitutional confrontation of some degree at some future date. It could well be that a President in this decade perhaps could be persuaded to sign a bill which would contain such a provision but a successor might take a different view of his constitutional responsibilities.

I wonder if it is wise to place in the hands of just one body of the Congress the authority to force a constitutional confrontation. For example, after the attack on Pearl Harbor, theoretically a President might have deemed it his responsibility to pursue the attackers despite
a resolution by the Senate or the House ordering him to withdraw forces.

How would you visualize a confrontation like that being resolved?

Mr. BINGHAM. I think my only answer to that, Mr. Findley, is that the exercise by the President of the power, in effect, to wage war without a declaration is such an extraordinary power that it should not be exercised unless both Houses are prepared to give at least tacit approval. I am not asking them to give explicit approval as the Javits bill does, but at least tacit approval.

I think it would be better to have such a constitutional confrontation, if one occurs, than to be in a position of uncertainty such as we are in today.

I don't think the majority of either House today would be prepared to vote to terminate the President's authority to carry on hostilities in Vietnam but if that were the case, then a confrontation would be inevitable. It would probably take place in regard to a funding resolution. That is why I think it is better to have a clear-cut procedure, rather than have to depend on a clumsy instrument like cutting off funds.

I would like to say, also, in response to the gentleman's question and the chairman's question about the timing part of this resolution, I am not wedded to that. I don't think that it is an essential part of this that the resolution be brought up within the day. That language is taken word for word from the Javits resolution, and I think was directed primarily at the problem of the filibuster in the Senate.

If you were dealing in terms of either the Javits type of resolution or this type of resolution, I think you have to have some provision to prevent a filibuster. What that provision should be, I don't know, but I certainly am not wedded to this particular language.

It may be that this calls for a schedule that is too short. I would not object to changes in that regard. I think that might very well be desirable.

Mr. FINDLEY. Thank you.

RESOLUTION EFFECT ON TREATY OBLIGATIONS

Mr. ZABLOCKI. I have a further question.

Your resolution provides for adoption by either House of the Congress:

The use of the Armed Forces of the United States in hostilities outside the territory of the United States in the absence of a declaration of war shall be unlawful following the adoption by either House of Congress of a resolution disapproving continuation of such use.

What if our troops are used in a territory outside the United States in keeping with a treaty agreement, how would your resolution of disapproving continuation of our treaty—would this not in effect abrogate a treaty?

Mr. BINGHAM. Would it affect what?

Mr. ZABLOCKI. If your resolution became law, would it be possible for Congress in one swift move to abrogate a treaty, a commitment we have in mutual defense of a country?

Mr. BINGHAM. I think this is right, but the Congress also has the power to cut off funds in such a case. It has that power today. The
problem in the case of a treaty is likely to be whether the use of troops is required under the treaty.

The United Nations charter is also a treaty. The use of troops under a resolution of the Security Council might be claimed to be that type of resolution.

I think that the answer in these cases is that if there is a firm obligation and something of that sort that requires action, then perhaps a declaration of war is the procedure that should be followed.

But, short of that, it seems to me that the Congress should have the power to do cleanly what it now has the power to do through the use of the funding process. That power actually exists in either House today because if one House steadfastly refuses to vote funds for a certain purpose, those funds are not voted.

STATUS OF DECLARATIONS OF WAR

Mr. Zablocki. As our colleague well knows, in the hearing last year we were repeatedly advised that a declaration of war is something of the past, that there are situations where it is either impractical because of certain conditions that the declaration entails. Would you nevertheless urge that there be a declaration of war regardless of the size of the confrontation?

Mr. Bingham. I think we have to accept the fact that declarations of war seem to have gone out of fashion, but this presents us with an obligation or responsibility as legislators to try to bring up to date what the Founding Fathers thought they were doing when they put the power to declare war in the hands of the Congress and the Constitution.

At that time, if the declaration of war had not been customary, I think the Constitution might very well have provided some safeguard against a President committing the United States to war without the consent of the Congress. This is a very grave problem indeed.

I am not wedded to any of this language, but I think we should try to come up with some language, some provision, that preserves in the Congress the power over hostilities, the power over the question of whether this country should be engaged in hostilities, that it had under the Constitution as far as the declaration of war is concerned.

RESOLUTION WOULD AFFECT VIETNAM WAR

Mr. Zablocki. Your draft resolution makes no specific reference to hostilities now in progress. If enacted, would it be possible for Congress to vote a “resolution of disapproval” on the Vietnam war?

Mr. Bingham. It certainly would; yes, sir.

Mr. Zablocki. Then, is this another version of H.R. 4100, the disengagement act?

Mr. Bingham. I think it would give the Congress the power to pass by one House something of that sort. As I said earlier, I think at this stage of the game, and I repeat this, there is not a majority in either House ready to call a halt to the Vietnam war.

Mr. Zablocki. Do you not believe that H.R. 4100 should have a hearing because of its far-reaching provisions?

Mr. Bingham. I do.
I am urging such a hearing now; yes, sir. We have no procedure for bringing it to the floor otherwise. If I thought that it could be brought to the floor—

Mr. Zablocki. I would like to join you in that score. I think any proposal as far reaching as H.R. 4100 should have hearings and so should a resolution disapproving of a conflict, because I think Congress sometimes acts too speedily and emotionally. As my colleague from Illinois has stated, we sometimes vote with our hearts rather than our minds. This does not add to the security of our country.

I have no further questions, but I just wanted to get that on the record.

Mr. Bingham. Thank you, Mr. Chairman.

INTRODUCTION OF CONGRESSMAN HORTON

Mr. Zablocki. Our next witness is the Honorable Frank Horton of New York. Congressman Horton is the author of H.R. 7290, a bill to restore to Congress its constitutional responsibilities in decisions to send American troops into hostilities.

Because that bill would establish a joint committee on national security, it has been referred to the House Rules Committee rather than to the House Foreign Affairs Committee.

Because of his interest in the war powers issue, however, Congressman Horton has asked to testify here, and we are happy to have his views on this subject.

Mr. Horton, you may proceed with your statement.

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Horton. Thank you, Mr. Chairman.

Mr. Chairman, and members of this distinguished subcommittee, I am honored to have the opportunity to testify before you on a subject which may have more potential than any other single legislative action for healing the divisiveness and the diminished credibility our Nation has suffered over foreign policies of the 1960's. I am particularly grateful to be here since, as you realize, my bill has been referred to the Committee on Rules because it provides for creation of a new joint committee. However, I feel that a major portion of my proposal, dealing with congressional war powers, is appropriately under your subcommittee's purview, Mr. Chairman.

The challenge to the 92d Congress to take responsible action in the arena of Presidential and congressional war powers is, to me, the most serious foreign policy challenge we face.

I come here as one Congressman who, like all the rest of us, has felt the pressure, the temptation and the frustration of being asked by large segments of the public to call signals during an ongoing war from the sidelines, participating in what, at best, have been back-handed and ineffectve legislative efforts to bring some congressional influence to bear on the era of national tragedy and distrust which has evolved since the passage of the Gulf of Tonkin resolution 7 years ago.

I cite the Tonkin Gulf resolution as a starting point of this era because that event, inadvertently or not, led to an abandonment by the Congress of any proper exercise of constitutional responsibility we
would or should have had in determining the course of America's march into the quicksand of Southeast Asia.

I see the point of this whole issue as being whether Congress, or Congressmen and Senators individually, want to forsake the luxury of sideline criticism of foreign policy and Monday-morning quarterbacking and take on a role which I see as being dictated by the Constitution, a role which would forge a partnership in responsibility with the Executive over the commitment of U.S. troops abroad.

A former Under Secretary of State who served during the Vietnam era said he seriously doubted Congress would prefer responsibility to Monday-morning signal-calling—at the same time he said that the passage of the Tonkin Gulf resolution was "one of the most unhappy things from the point of view of the President," because it precluded his having to return to Congress to win a continuing mandate on the war.

DUTY OF CONGRESS UNDER CONSTITUTION

While former Under Secretary Katzenbach may be correct in his assessment that at least some Members and Senators would prefer the politically safer course of criticizing military actions which are solely a result of Presidential orders, I don't believe the safety of our political skins is a justifiable factor in considering this legislation. As I see it, and as Senators Javits, Eagleton, and others who have introduced war power bills have said, we in Congress have a duty, a responsibility, like it or not, under the Constitution to play a major role in any decision to involve American troops in hostilities. Congress, in effect, abandoned this responsibility in 1964 when it accepted President Johnson's determination to retaliate against the North Vietnamese by enacting the Gulf of Tonkin resolution. The power gap we created was quickly filled, and has been filled to this day by exclusively Presidential decisions as to the extent of our commitment of troops to hostilities in the nations of Indochina.

House Joint Resolution 1, which passed the House last year, marked the first effort by the Congress to regain its constitutional role in decisions of war and peace. It is a significant initiative because, at least by implication, it encourages Presidents to consult with the Congress prior to taking military actions. I supported House Joint Resolution 1 in the 91st Congress and would support it again if it proves impossible to get any stronger or more specific legislation through the 92d Congress.

BILL AUGMENTS HOUSE JOINT RESOLUTION 1

The bill I have introduced augments the language of House Joint Resolution 1 in two important ways. First, H.R. 7290 more clearly specifies what course of action the Congress may take if it does not concur with the President's action and his reasons for it. Second, H.R. 7290 establishes a specific procedure for Executive consultation with the Congress which I think is sorely needed.

While House Joint Resolution 1 might encourage such consultation through a sense-of-Congress resolution, H.R. would require it.

The one test which all the war powers bills must pass is whether they change the balance of power between the President and the Congress as defined in the Constitution. House Joint Resolution 1 certainly passes this test and I must commend you, Mr. Chairman, for the great care you have given to not limiting the President's legitimate powers.
as Chief Executive and Commander in Chief. However, I also want to emphasize at this point that H.R. 7290 takes equal care to maintain the delicate balance of constitutional power between Congress and the President while dealing more specifically with the makeup of this balance, with the elements of this balance which are meaningful in the context of the world situation in the 1970's. My bill seeks, generally, to define those instances in this modern age, and within the meaning of the Constitution, where the President is empowered to commit U.S. forces to hostilities with neither prior consultation with, nor prior authorization by, the Congress.

The major thrust of my testimony this afternoon is to bring to your attention my bill which gives to the actual mechanics of the exercise of congressional responsibility in war-making decisions, and of the process of consultation between Congress and the President.

TRUST ERODED BETWEEN PRESIDENT AND CONGRESS

I am one who believes that while the powers assigned to Congress under article I, section 8, are intended to provide a thorough and workable system of checks by Congress over Presidential authority, the actual exercise of these powers does not require the Congress and the President to pair off in an adversary role whenever a decision involving national security is called for. Over the nearly 200 years of our history, our foreign policy has been more successful when Congress and the President have acted in an atmosphere of trust and partnership, rather than in one of distrust and sniping over foreign policy issues.

To a major extent, Presidential decisions during the Vietnam era, and the failure of Congress to affirmatively carry out its duties in this period, have eroded that desirable atmosphere of trust and partnership.

I feel that any legislation we adopt must be drafted with an eye to reestablishing, in the long run, a working partnership between the executive and legislative branches where war decisions are concerned.

Thus, in H.R. 7290, I have sought to establish a procedure whereby, psychologically as well as substantively, the fostering of such a partnership would be encouraged.

JOINT COMMITTEE ON NATIONAL SECURITY

Title II of my bill would create a Joint Committee on National Security of the Congress.

The Joint Committee on National Security would bring together authoritative Members of Congress in foreign and military affairs. Its membership would include the majority and minority leaders of both Houses and the chairman and ranking minority members of congressional committees concerned directly with foreign and military policy. The president of the Senate, the Speaker of the House, and the minority leaders in the House and Senate would each appoint one additional member. A detailed listing of the joint committee's membership is contained in the appendix.

I ask that it be included with this statement. (See pp. 24–25.)

This new committee would be designated by Congress as the panel authorized to consult with the President and his national security advisers in situations where congressional powers are involved and where congressional ratification of military actions is required by H.R. 7290.
I cannot overemphasize, Mr. Chairman, that the need for this joint committee does not arise from any demonstrated inadequacy or ineffectiveness of the existing legislative committees of the House and Senate which have responsibility for foreign and military affairs. It is precisely the importance of these committees and the role they would play in the actual carrying out of congressional powers under my bill which prompted me to assemble the leadership of these committees, together with the leadership of both parties in the House and Senate on a single panel—a panel which would be officially and formally designated by the Congress to receive Presidential communications required under this legislation, and to be available to consult privately with the President or his national security advisers in international emergencies.

JOINT COMMITTEE: NO LEGISLATIVE POWER

You will note, Mr. Chairman, that my bill assigns absolutely no legislative power or jurisdiction to the Joint Committee on National Security. Any legislative measures short of or including a declaration of war must first be considered and reported out by the appropriate committees of the House and Senate.

The prestigious and bipartisan nature of the joint committee's membership would, I feel, help to set the stage for an atmosphere of partnership and unity surrounding emergency military decisions, without risking a reluctant rubber stamp of Presidential actions in situations where the Congress does not feel his decisions are in the national interest.

I have also included in H.R. 7290, a provision requiring the joint committee to transmit the President's report on his actions to the appropriate committees of the House and Senate together with a recommendation for congressional action. Far from impeding the legislative process which is to take place within the 30-day period following a military action under the President's emergency powers, I feel that a prompt and authoritative recommendation from this prestigious panel would fulfill a great psychological need for the Congress and the Nation during what would inevitably be a moment of crisis and uncertainty.

JOINT COMMITTEE WOULD ENCOURAGE PARTNERSHIP

In short, I feel the establishment of a Joint Committee on National Security would acknowledge the roles of both the Senate and House in the exercise of legislative powers delineated under the Constitution. More importantly, I feel it would encourage the creation of a working partnership between the Congress and the Executive in moments of international crisis. I do not feel that the joint committee would be an impediment to prompt action or mere excess baggage because of its lack of legislative jurisdiction, but think its very existence would enhance the role of Congress in decisions whether or not to dispatch U.S. troops into hostile action.

NO "SERVICE MANUAL" FOR CRISIS

There is one general point in support of the language of H.R. 7290 that I would like to make. I do not feel that the legislation we enact should be an attempt to write an exhaustive "service manual" for na-
tional emergencies. We cannot possibly predict every sort of eventual-
ity, and then seek to describe in detail the roles of Congress and the
President in each possible occurrence. Whatever the language of the
bill we enact, its effectiveness will depend to a great extent on an atmo-
sphere of trust between the two branches of Government. Without this
atmosphere, Presidents will tend to opt for their interpretations of
foreign policy history and constitutional provisions in justifying their
actions, and Congress could again largely be left with the role of
Monday-morning quarterback.

I feel that the language of my bill is firm enough to define the proper
war power roles of the Congress and the Executive, without succumbing
to the serious charge that the bill ties the President's hands, or
seeks to limit his legitimate powers.

There is no question that legislation is needed to apply the meaning
of legislative war powers in article I, section 8 to the present-day world
of rapid communications, instantaneous weapons of war, and Ameri-
can leadership of the free world. A bill is needed which accomplishes
this without hamstringing legitimate Presidential powers to respond
to emergency situations. I strongly feel that the provisions of my bill
meet this standard.

Also, I feel that my proposal for a Joint Committee on National
Security, while it would not substantively change the balance of war
powers between the White House and Capitol Hill, would add to the
stature of the legitimate role of Congress, and would encourage an
atmosphere of partnership and trust in the functioning of both
branches of Government in an emergency.

SECRETARY ROGERS BACKS JOINT COMMITTEE

In his testimony on May 14 before the Senate Foreign Relations
Committee hearings on war powers legislation, Secretary of State
William Rogers emphasized repeatedly the need to improve the
mechanics, the scope and the frequency of consultation between the
President and the Congress on military and foreign policy issues. The
tone of his remarks were such that the news media reported the Secre-
tary had endorsed the formation of a joint congressional committee
to facilitate this improved consultation.

Congress is not the Commander in Chief, nor is it an adjunct of the
military structure. Congress, as spokesman for the people, has an in-
dependent responsibility involving questioning, evaluation, and
judgment.

My bill is addressed to the fulfillment of this responsibility, and I
hope that my testimony here this afternoon will be a constructive
addition to the commendable attention your subcommittee is already
giving to this subject.

(Memorandum referred to follows.)

MEMBERSHIP OF THE PROPOSED JOINT COMMITTEE ON NATIONAL SECURITY

Chairman: The Speaker of the House.
Vice-Chairman: The President pro tempore of the Senate.
Members:
The Majority Leader of the House.
The Majority Leader of the Senate.
The Minority Leader of the House.
The Minority Leader of the Senate.
The Chairman and ranking minority member of each of the following
Mr. ZABLOCKI. Thank you, Mr. Horton.

I can assure you that your testimony has indeed been a constructive addition. Your proposal, of course, is not pending before this subcommittee nor even the full committee, but the House Rules Committee. I think it is one worthy of full consideration, although I might ask some questions in regard—

Mr. HORTON. I do adopt the Javits approach in H.R. 7290, and have used basically the same definition of the war powers. I have refined the language somewhat, but the major difference is that I have added the Joint Committee on National Security. The joint committee would operate to give the Congress mechanism for meeting with the President and his national security advisers, so that we have ongoing, continuous consultation.

Mr. ZABLOCKI. Your bill, however, does not specifically provide that the President meet with the joint committee, but only report to it. You have created a legislative history by saying it is your intent that the President would meet with the joint committee and the National Security Council, did you say?

Mr. HORTON. Section 102 says:

In any case in which military hostilities described in section 101 of this title are initiated by the President, the Joint Committee on National Security established under title I of this Act shall be convened prior to or within twenty-four hours after the initiation of such hostilities, and the President shall report the initiation of such hostilities to the joint committee, together with a full and complete account of the circumstances bearing on the necessity for the initiation of such hostilities.

So he would be required within a matter of 24 hours to report to that joint committee on any action which has been taken.

This committee would be in existence, so it could meet at any time with the President, or with the people designated by the Executive, to be informed of pending military action that might be necessary.

WHO WOULD CONVENE JOINT COMMITTEE?

Mr. ZABLOCKI. To that very point, who would convene the joint committee? You have inferred at least that the President to make his report would meet with that committee.

Mr. HORTON. He would have that responsibility.
Mr. ZABLOCKI. Who would convene the joint committee, the President?

Mr. HORTON. The committee's chairman would convene the committee.

Mr. ZABLOCKI. You do provide that the Speaker of the House would be chairman.

Mr. HORTON. On page 4 of my bill, in line 15:

"The Speaker of the House of Representatives shall serve as chairman of the joint committee and the President pro tempore of the Senate shall serve as vice chairman of the joint committee.

Then it also says in section 202:

"It shall be the duty of the joint committee to convene at the call of the chairman to receive any report required under title I of this Act and to report to those committees of both Houses of the Congress which will consider legislation referred to.

Et cetera.

Mr. ZABLOCKI. You give 24 hours in your bill. Who would have the responsibility of convening the joint committee?

Mr. HORTON. The chairman. My bill names the Speaker of the House as chairman, but I indicated in testimony before the Senate Foreign Relations Committee that I prefer a rotating chairmanship.

Mr. ZABLOCKI. Even though the President is not ready to report?

Mr. HORTON. The President would have a requirement under this act to meet with the committee and, within 24 hours, he would have to report to it.

Mr. ZABLOCKI. This would be something that I am sure the Rules Committee will explore completely.

Mr. HORTON. The idea, Mr. Chairman, is to have a designated, ongoing committee of the Congress that is available to meet with the President and the National Security Council in times of emergency.

Now, for example, if the President wants to brief anybody, it is solely his decision as to who gets an invitation to come to the White House.

It seems to me we ought to have some mechanism to afford the Executive a liaison, as it were, with the Congress.

A BIPARTISAN HEARING BODY

Mr. ZABLOCKI. I agree this would provide a bipartisan hearing body where in past instances only Members of the President's party have been briefed.

Mr. HORTON. If you will look at the list, there are 24 Members of the committee. They represent a good cross-section of all the standing committees appropriately involved with these problems.

Mr. ZABLOCKI. As I have said earlier, I find some merit but I am not ready yet to subscribe to it fully.

I understand my colleague from Illinois must leave. I have another question, but I will call on Mr. Findley.

Mr. FINDLEY. Thank you, Mr. Chairman.

I think Mr. Horton has given us another demonstration in his long series of imaginative proposals in the foreign policy area. I appreciate very much his taking the trouble to come here today to outline his plan.
In fact, the proposal for a continuing consultation between the Congress and some form of the executive branch is very timely. The committee attempted to take that into account in House Joint Resolution 1 in the language at the top of page 2, the wording "should continue such consultation periodically during such armed conflict."

CONSULTATION ON CAMBODIAN INCURSION

One of the most gratifying examples of liaison between the executive branch and the Congress, in my memory here, was the occasion right after the incursion into Cambodia when the President had on two separate days the Senate and House Committees on Armed Services and Foreign Affairs and Relations in order to talk directly with them about what he had done and what, as he saw it, would lie ahead. To my knowledge, this is the first such event that occurred during the Vietnam war and, unfortunately, it has not been repeated since then.

I think anything we can do to encourage the President to meet with appropriate representation of Congress during any period of sustained conflict is highly desirable. I am not sure we can require it by law because of the separation of powers, the independence of the executive from the legislative, and vice versa, but it certainly should be encouraged and I commend the gentleman for his very excellent statement.

Mr. Horten. Thank you. I am very much concerned about these war powers. I do appreciate the work of this subcommittee. I know of your deep concern about it, too, Mr. Chairman, and members of your subcommittee. I think it is important for us to define it.

Just before I testified before the Senate Foreign Relations Committee, Senator Goldwater was testifying. In his prepared text, I think he said there were 158 instances in which the United States had been engaged in conflicts and only six or seven of those that had authorization from Congress. This is what has happened. The Executive has really moved in. If the Constitution has any meaning at all, the Congress has an important role to play insofar as the war powers are concerned, but our role has not been properly defined or carried out. We have created a hiatus or a vacuum, and the Executive has moved in to fill it.

Mr. Zablocki. Mr. Bingham?

ESTABLISHING A DATE FOR HOSTILITY BEGINNINGS

Mr. Bingham. Thank you, Mr. Chairman.

Mr. Chairman, I have just been advised that the joint resolution that I introduced today is No. 669. I would like to ask unanimous consent that that number be inserted in my testimony at the appropriate place.

Mr. Horten, I would like to ask you a couple of questions about the latter sections of your bill which follow very closely on Senator Javits' proposals and reflect some of the concerns that I have about that. You speak, for example, of the authority to carry on hostilities under these conditions as not continuing for more than 30 days from the date such hostilities are initiated.

When would you say we initiated hostilities in Vietnam?

Mr. Horton. Establishing a date when hostilities begin could be clear cut or it could not be clear cut, depending on the circumstances. I think in some instances it might have to be a determination by the
Executive or the Congress. If there was an attack such as Pearl Harbor, there would be no question about the date. If there is a landing, there would be no question about the date. However, if it is a case of gradual buildup, of guerrilla activities, and so forth, it might be the date we first committed our forces to actual combat, or when we sustained our first combat casualty.

But I think, in most instances, it could be fairly well defined. I think in the Vietnam situation it could have been fairly well defined.

Mr. Bingham. Didn't we have military advisers suffering casualties during the middle 1960's, before the Tonkin Gulf resolution?

Mr. Horrox. That is exactly why we need a clear definition of war powers. The President now feels he can move troops back and forth and commit the Armed Forces of the United States to combat without having to come to Congress.

I think that is the whole thrust of the problem before us. I know the gentleman from New York agrees with me that there is the need for a definition of congressional and Executive powers. As I said earlier, the Congress has just not taken any role in this and has exercised no initiative.

The fact of the matter is that we have almost abrogated our responsibilities under the Constitution. The definition of the Commander in Chief, as I see it, is not to make war but to continue or to carry out the warrnaking policies laid down by the Congress. But the Executive has broadened his powers to the point where now he can commit forces and get us engaged in conflicts without the Congress or the people knowing anything about it.

I think it is important for the Congress and the people to know. This, again, is why I think it is essential that we define this relationship between the Congress and the Executive.

POSsIBLE CONFUSION IN "30-DAY" PROVISION

Mr. Bingham. I certainly agree in general. All I am trying to point out is, as I indicated in my testimony earlier, there may be some confusion about a 30-day period as to when that 30 days begins.

Let me also point out something that troubles me, and I think it follows the Javits proposal.

Under section 204 of your bill you indicate that the authority to continue hostilities may be terminated by joint resolution of the Congress before the expiration of the 30-day period. What about after the expiration of the 30-day period? If the Congress has given the authority, is that authority irreversible?

Mr. Horrox. No, it would not be. The President would be permitted after the 30-day period to continue if he had congressional authorization. I would assume that the authorization would spell out what the terms would be.

It would be one that would require an accounting every year or within a certain period of time, just like we are required to appropriate moneys for the Army, the Navy, the Air Force, et cetera, every year.

I think we would have to come back with further authorization and approval of any such warrnaking authorization that the Congress had acted upon.
Mr. Bingham. I think that is a very interesting thought and it is one which has passed through my mind applying to the Javits bill, but it is not contained in the Javits bill.

Mr. Horton. No, it is not spelled out.

Mr. Bingham. The Javits bill is one-time authority and that goes indefinitely. There is no requirement that it be reinstated every year or every 6 months.

Mr. Horton. I am not saying that the Javits bill is perfect, and I realize that you said the same thing with regard to your bill. My proposal for a joint committee is not a perfect idea. It is just to put some of these ideas into the hopper so that the committees can formulate meaningful legislation. The point is that the war-making powers as they apply to the Congress today are not spelled out very well and they are not carried out at all.

It seems to me they do have to be spelled out and that the Congress does have to reassert its authority in this field. Otherwise, the Constitution is meaningless. The Commander in Chief's authority, in my judgment, does not mean that the Executive can commit our forces ad infinitum whenever the Executive wants. I think that is part of the problem we have with the Vietnam situation.

Sees Problems in Bingham Resolution

Mr. Bingham. I thank the gentleman.

I would just like to ask him with all respect to have a look at the resolution I put in today and see if it does not carry out the intent of his provisions and of the Javits bill in a way that might give rise to less difficulty.

Mr. Horton. I am sorry I was not here when you read your statement. But my initial interpretation of your resolution is that there is a continuing authorization for the President to act unless the Congress takes some action to disapprove it.

Mr. Bingham. Unless one House take action to disapprove it.

Mr. Horton. I think that the resolution fails to recognize the war-making authorities that are granted to the Congress. In other words, I think that you are begging the authority granted to the Congress under the Constitution. You are saying to the President, “Go ahead, whenever you declare war, whenever you want to commit our forces, you go ahead and commit them. But if we don’t like it, we will step in and disapprove it and you have to pull them all back.”

I would rather take an affirmative approach. I would rather say, “These are the only times you can commit our forces unless you have a declaration of war.” With a declaration of war, of course, that is different, but we are talking about undeclared war. “If there is not a declaration of war, these are the only times you can commit American forces. You can commit them for 30 days. In that interim, you have to report to us and the Congress will have to take action. We will have a committee of the Congress who will be working with you at all times.”

In that way, we will have better liaison and better relations with the Executive in this field, and perhaps we can act better when an emergency situation arises.
As I say, I would prefer to do it on the affirmative rather than "You go ahead and do it no matter what the situation is and if we don't like it we will disapprove it."

Mr. Bingham. I appreciate the gentleman's thoughts. Does the gentleman really think that the conditions that are spelled out, one, two, three, four, particularly three and four, are in any way restrictive on what the President can do if he chooses to carry out the—

Mr. Horton. Are you talking about H.R. 7290?

Mr. Bingham. Yes, the condition that he can act to protect the lives of U.S. nationals abroad and force to comply with national commitment resulting from affirmative action and so on.

Mr. Horton. The point is that if he does commit our forces, the Congress, within 30 days or shorter under section 204, can say get out of there.

DESI RABILITY OF SPECIFYING WAR CONDITIONS

Mr. Bingham. Wait just a minute. I am turning to a different subject now, which is the desirability of attempting to specify the conditions under which the President can act in the first instance. Although I had such a list in my bill last year I have come to the conclusion there is no such purpose to be served in trying to provide a list because either you make it so broad to be meaningless or it is unduly restrictive. I think that these conditions actually could be interpreted so as to permit a President to do more or less as he chose and then the later provisions would come into effect. But looking at just the four situations under which you permit the President to act, are you happy with that listing?

Mr. Horton. Basically, yes, with the idea that those are the situations in which the President could act in the absence of a declaration of war.

It is a very interesting question and I am glad that is being brought up. It has not been brought up so far as I know in the history of our country, and I think it is important for us to spell it out. The point you make is a good one. It is one that we should give consideration to; namely, whether you use a list or whether you don't use a list. I would prefer to list the conditions, as does the Javits bill and my own, rather than say, "You go ahead and do it and we will come in and blow the whistle if we don't like it."

But I certainly respect your view and your approach and I know you have given a lot of thought to it. I think, basically, you and I have the same concerns; namely, to spell out what the war powers are and have some mechanism whereby we are not going to get embroiled in filibusters and definitions, and so forth, and not get any action. That has been the problem we have had to date. That is why the Presidents have moved in, in 158 instances before the Congress could move. I think it is time we updated the Constitution, if you will, and make it more meaningful in the definition of war powers so that we can exercise the responsibility we have under the Constitution.

Mr. Bingham. Basically, I do think we are in agreement. It is just a matter of discovering the best technique.

Thank you, Mr. Chairman.
COMMENTS ON HOUSE JOINT RESOLUTION 1

Mr. Zablocki. I have one last question this time on House Joint Resolution 1. At one point you did say that you would prefer to see House Joint Resolution 1 strengthened. Would you very briefly advise the subcommittee about that?

Mr. Horton. It is a good bill, but I would prefer something more specific and better defined.

I voted for it before, and I would vote for it again.

Mr. Zablocki. The colloquy between you and my colleague from New York surely has indicated what problems we have in detailing specifics.

Mr. Horton. Right.

VIETNAM NOT AFFECTED BY HORTON BILL

Mr. Zablocki. Let me ask this question as to your bill, H.R. 7290. Title III, section 301, says:

This act shall not apply to any military hostilities by the Armed Forces of the United States undertaken before the date of enactment of this act.

Then a requirement to reporting to the joint committee on the Vietnam war would not be included?

Mr. Horton. My bill was purposely designed to eliminate the Vietnam conflict.

Mr. Zablocki. Technically, World War II is not declared ended. Technically, because of our military commitments to NATO, for example, should there be a confrontation, title III would seem to exclude presidential reporting. Am I giving a proper interpretation?

Mr. Horton. I don't believe so, Mr. Chairman. The NATO situation would be covered under page 2, line 10, section 4. That is one of the instances in which the President could act to comply with a national commitment, resulting from affirmative action taken by the executive and legislative branches of the Government by means of treaty, convention or legislative enactment specifically intended to give effect to such commitment.

The language of title III is just to prohibit any application of this technique to the Vietnam situation.

Mr. Zablocki. I am very happy to have that legislative history on your part because I think title III, section 301, could very well be interpreted to negate the entire purpose of your proposed act.

Let the Rules Committee make that decision.

I want to again thank you, Mr. Horton, for a very excellent statement. We appreciate your comments and your answers to our questions.

Mr. Horton. Thank you, Mr. Chairman.

INTRODUCTION OF CONGRESSMAN CHAPPELL

Mr. Zablocki. Our final witness of the day is the Honorable Bill Chappell, Jr., of Florida. Congressman Chappell is the author and principal sponsor of House Joint Resolutions 664 and 665, relating to the war powers of Congress.

Mr. Chappell, we look forward to having your thoughts on this most important subject. You may proceed.
STATEMENT OF HON. BILL CHAPPELL, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CHAPPELL. Mr. Chairman, let me thank you and your subcommittee for excellent work in this area.

Let me express my appreciation, too, for the very excellent bills which many of you have already introduced, and specifically the one which you passed last time in the House and which is again under consideration in this subcommittee.

If I might, Mr. Chairman, since the hour is late, and I know you would like to move on, if I might have your authorization to have my statement received in the record in toto, then I will just start with a summation, and perhaps we can proceed more rapidly that way.

Mr. ZABLOKI. Without objection, it is so ordered.

(The prepared statement of Mr. Chappell follows:)

STATEMENT OF THE HONORABLE BILL CHAPPELL, JR., MEMBER OF U.S. CONGRESS, FOURTH DISTRICT OF FLORIDA, IN FAVOR OF HOUSE JOINT RESOLUTIONS 664 AND 665, JUNE 1, 1971

Mr. Chairman, I wish to thank you and the other committee members for this opportunity to discuss measures intended to better define the respective powers of the Congress and the President in the exercise of the war-making power.

Just last week, some 49 members joined me in introducing House Joint Resolutions 664 and 665. This measure is designed to strengthen and specify action with which both the President and the Congress must comply when American troops are committed to battle outside the United States.

We wish to commend those other persons who have introduced similar measures designed for the purposes of again having the Congress fulfill its constitutional responsibility with regard to our Nation's involvement in war. Your reasoning in House Joint Resolution 1 is incorporated in the measures which we have introduced. We respectfully ask your consideration of these bills in your deliberation on this subject as additional suggestions as to how the problem of prolonged involvement might be solved.

First, I believe we all agree that some congressional definition needs to be made. Our Nation totters on the brink of despair in its efforts to understand America's involvement on another soil 10,000 miles away in a war we have never chosen to win.

Our youth are frustrated from battle stagnation and too often have turned to the fantasy of drugs. Thousands of mothers have cried in despair at the burial of their sons, lost to battles they were not permitted to win. Rebellion has sounded in the mass patterns of feet attuned to the divisive mechanics of our international enemy.

LETTERS SHOW SCARS OF WAR

This problem plagues the citizens of our Nation daily. Letters pour into my office each day, revealing the anguished scars this war is leaving on our people. Too many young people regard our process with skepticism and our military system has suffered tremendously in both prestige and morale. Our people ache to see this matter settled. Some of our young people resort to radicalism, and our military system has been cheapened as a result of our involvement. Thousands of our comrades live among us as maimed and disfigured reminders of the horrible sacrifices of war. God forbid that history shall ever record those as symbols of a vain and ill-reasoned season of conflict.

Neither praise nor condemnation of actions, past or present, but rather their unforgettable lessons, will avail us to a sensible direction for the future. One such lesson is that no government dare commit its people to prolonged armed conflict without a clear definition of the purpose of such commitment and the will of the people to pursue them to victory. How, then, do we implement the lesson? We best do so by clearly defining the respective responsibilities of the President and the Congress with reference to the constitutional power to make war. The proposed resolution before us, I believe, is a reasonable approach to such implementation.
NO EFFECT ON PRESIDENT'S REPELLING ATTACK

This resolution in no way alters the President's power to initially engage our forces to repel a sudden attack or to protect American lives and property. It simply requires the President, within 72 hours of committing any of our Armed Forces to action in any armed conflict outside the United States, to report such commitment to the Congress. If the Congress shall fail to approve or otherwise act on such report, within 20 calendar days after receiving it, the President shall within the next succeeding 30 days terminate such commitment and disengage all forces so committed.

This proposal embraces the intent of the framers of the Constitution and the thoughtful declaration of many great Americans after them.

Article I, section 2, of the Constitution states that the Congress shall have the power to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the Government and regulation of the Armed Forces, to provide for calling forth the militia, to execute laws, suppress insurrections and repel invasions, to provide for organizing an army and disciplining the militia and to make all laws necessary and proper for executing the foregoing powers. Article II, section 2, of the Constitution states that the President shall be commander in chief of the army and navy.

INTENTION OF CONSTITUTION FRAMERS

The framers of the Constitution were very deliberate in balancing the powers of this Government and those of the Congress and President, and they were deliberate for excellent reasons. All too frequently the American colonies were drawn by the King's decrees into England's wars. The leaders of the newly independent republic resolved to make certain that their new country would never again be drawn into war at the direction and discretion of a single man. For this reason, it transferred the war power to the legislative branch of the newly created government.

Indeed, the framers of the Constitution recognized that the President, under certain circumstances, might have to take defensive action to repel and subdue a sudden attack upon this great Nation. But that was the extent of the war-making power they were willing for him to exercise. The intent of the framers is made quite clear in the proceedings of the Constitutional Convention and in the subsequent writings of our Founding Fathers. Thomas Jefferson, in a letter to James Madison, back in 1788 said:

"We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the executive to the legislative body, from those who are to spend to those who are to pay."

Pursing this same line of thinking, Alexander Hamilton, who generally favored extensive presidential power, nonetheless wrote:

"The President is to be Commander in Chief of the Army and Navy of the United States. In this respect his authority would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy, while that of the British King extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the constitution under consideration, would appertain to the legislature."

When, in 1846, President James Polk sent American soldiers into the controversial territory of Texas, marking the beginning of the Mexican War, Abraham Lincoln was just a young man in the House of Representatives in the State of Illinois. Lincoln felt that the President had acted unconstitutionally, and he said:

"... allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so, whenever he may choose to say he deems it necessary for such purposes—and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect, after you have given him so much as you propose. . . ."

CONSTITUTION IS A LIVING DOCUMENT

I deeply believe that the Constitution is a living document. The Congress of the United States must activate its responsibilities under this document for determining war and peace. Although I have been a Member of this distinguished body for a very short time, I have for ten long years watched the shadow of
a war creep over the mood of this land. I feel most profoundly that had Congress either declared or refused to allow our involvement in Vietnam at its outset, a clear-cut attitude would have been established and the national hurt of our people avoided.

The United States is the leader of the free world today. But this is not so because our citizens are anxious that we take the lead in military battles; nor because our diplomats are the most expert; nor because our policies are faultless or the most popular. The mantle of leadership has been placed upon our shoulders not by any nation, nor by our own Government or citizens, but by destiny and circumstance—by the sheer fact of our physical and economic strength, and by our role as the only real counter to the forces of communism in the world today. If events in Indochina have taught us to better fulfill that role, then it is not a wholly dark story. And I want to emphasize that this resolution affects in no way our present involvement, but that the mistakes of the past must be heeded in the future.

Mr. Chairman, we in the Congress have the power to assure the American people that never again will we allow a situation like Vietnam to occur. Let us play the part our forefathers intended in the delicate exercise of the war making power. Let us clearly define the respective responsibilities of the President and the Congress in the exercise of it. I urge a favorable report of your committee on H.J. Res. 664 and 665.

Mr. Chairman, thank you again for allowing us to appear. We commend you and the Members for the work you have put into this matter and want you to know that we will work with you in every way possible in the measure your committee reports.

STATEMENTS BY FOUNDING FATHERS

Mr. CHAPPELL. By way of summation, I would like to call the subcommittee's specific attention to page 3 at which I have discussed briefly the constitutional provisions which I think are embodied in the work that all of us are planning to do in this field and also to pages 4 and 5 where I have referred specifically to what I believe to be the intent of the Founding Fathers on the constitutional provisions touching the war powers.

I would like to mention specifically the statement made by Thomas Jefferson in a letter in 1789 to James Madison, where he says—

We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.

Then the words of Alexander Hamilton when he was pursuing the same line of thinking, when he said—

The President is to be commander in chief of the Army and Navy of the United States. In this respect his authority would be normally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the Military and Naval Forces, as First General and Admiral of the Confederacy, while that of the British King extends to the declaring of war and to the raising and regulating of fleets and armies—all which, by the Constitution under consideration, would appertain to the Legislature.

And then, third, the words of Lincoln, who in 1846, referring to James Polk and his experience in the commencement of the Mexican War, he said—

... allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion; and you allow him to do so, whenever he may choose to say he deems it necessary for such purpose—and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect, after you have given him so much as you propose ...

Mr. Chairman, I have referred to that only to place in the record, I think, some of the basic thinking of those who were instrumental in
framing the wording of the constitutional provisions relating to the warmaking powers.

PROLONGED WAR IN VIETNAM: CONFOUNDING

I believe it is the prolonged war situation which bothers all of us. I think all of us recognize that the President has to have a free hand in order that he can protect us in the case of a sudden emergency or to protect our people overseas or our property. I think none of us are concerned about his immediate exercise of his powers under the Constitution to do that.

I do think it is the prolonged war which confounds all of us and we don’t know just exactly where to place the limit. I speak specifically with reference to House Joint Resolution 664 and House Joint Resolution 665 which I, together with some 49 other coinintroducers, introduced last week. It is the simple intent and purpose here, Mr. Chairman, to supplement very much the fine thoughts which the chairman and those who coinintroduced his bill with him and to take just perhaps another step to say what does happen in the event the Congress does not act.

INACTION OF CONGRESS HAS CAUSED DIFFICULTY

It has been the inaction, I believe, of the Congress which has again caused so much of our difficulty. It has been fearful, it appears, of getting in at the time when we should get in in order that we might define our part and procedure in that which might amount to a prolonged war. The resolutions about which I speak specifically simply provide that except in the case of a declaration of war by the Congress or the declaration of an emergency by the Congress that the President if he engages, actually engages our troops outside of the United States in hostile conflict, he, within 72 hours, must report that fact to the Congress, giving his reasons for it and the expected duration of the conflict or the engagement and then if the Congress does not within 30 days thereafter act to approve or otherwise instruct the President, then he shall have an additional 30 days within which to disengage those forces.

I don’t know whether the 30-day period, as has been suggested here earlier, is the right time or not. Perhaps it should be 60 or 90 in each instance.

All we are attempting to do through this resolution is define that period of time within which the Congress should act to approve an engagement of war by the President, failing which the President shall disengage all forces so committed.

I do want to emphasize the point that none of us intend to hamper the President in the exercise of his emergency powers.

There is nothing in this provision that attempts to take away from the President any of his powers, but, rather, to bring the Congress properly into focus in the presentation of its responsibilities. So I believe this approach, though certainly not perfect, is a good approach, a reasonable approach and one which would eliminate in the future our engagement without an intent to win by our forces in combat under circumstances such as Vietnam.

Mr. Chairman, I thank you and thank your wonderful subcommittee for the opportunity to present my thoughts to you. Knowing your
work so well, I think that whatever you bring from this subcommittee will be something I can support on the floor as I supported you the last time.

QUESTIONS DETAILS OF CHAPPELL BILL

Mr. Zablocki. Thank you, Mr. Chappell, for your excellent statement. Also amplifying on the language contained in your Resolutions 664 and 665, frankly, on page 2, lines 6, 7, 8 and 9, I have some concern because you say, "shall report in detail to Congress his reasons for his evaluation with respect to the effect and duration of." In your further explanation you said "expected duration."

Mr. Chappell. Mr. Chairman, again, I am not wed to that particular language.

Mr. Zablocki. I have trouble with the word "detailed." to have a detailed report on and how long a confrontation would last. I think no President could indeed fulfill that part of the law if it did become law. What I do have a real problem with is that "if Congress within 30 calendar days after receiving such report shall not by concurrent resolution or otherwise act on said report, such commitment shall be immediately terminated." What about filibusters?

ANTI-FILIBUSTER PROCEDURES

Mr. Chappell. As I say, it may be that some of the thoughts others have had with reference to filibuster might better perfect the bill. I believe, as was stated here earlier, that the Congress, within its own range, has a way of solving those problems, especially with a subject so intense as the Vietnam situation. I think that a longer period of time might be better for congressional action, or a procedure to overcome a filibuster. I think this is a valid consideration and much thought, I think, needs to be given to it.

I personally believe that if we set a period, whether it is 30, 60 or 90 days, I believe if we put that period in there, if the President of the United States with all of his influence and that of those who work in his administration and the military officials which guard our country and those in the Congress who are interested in taking a particular step, if they are not all together strong enough to overcome such a problem as filibuster then I think we have very serious problems anyway—and perhaps it is the kind of prolonged conflict we ought not to be engaged in.

Then, of course, the President has the opportunity of a total of 63 days in such an emergency engagement under this bill.

I would like to comment on the thought the chairman mentioned about reporting in detail. The intent and purpose with that language is to simply have him give sufficient information on which the Congress might be alerted to take action. Now, with reference to the duration, the bill simply provides, "and his evaluation with respect to the effect and duration." Now, that is only his evaluation. It does not say he has to tell us it is going to last exactly 6 months, a year, or 10 days, but to give his evaluation as to what might be expected. The thinking behind that, Mr. Chairman, is that the Congress might take one action if it be convinced the engagement will be a quick conflict and another if it be convinced that a prolonged conflict might ensue.
CHAPPELL BILL: NO VIETNAM APPLICATION

Mr. Zablocki. I also notice that your resolution does not apply to the armed conflicts in which the Armed Forces of the United States are engaged today.

Mr. Chappell. That is right. It is not intended to solve the problems that already exist with reference to Vietnam. I believe we are in the process of disengagement there of one sort or another. I think here we should take the lessons we have learned and try to put those lessons into a way of having the Congress better act in the event we come into a situation like that again.

Mr. Zablocki. Thank you very much.

Mr. Bingham?

NOTES CO-SPONSORSHIP OF CHAPPELL BILL

Mr. Bingham. Thank you, Mr. Chairman.

Mr. Chappell, I certainly would like to commend you for your statement. I am particularly interested in those quotations you brought before the subcommittee. I think they are most apt indeed, from the Founding Fathers and from President Lincoln when he was a Congressman. It is interesting that Hamilton who was considered an advocate of strong presidential power made it clear that he did not intend to have the President have the power to carry on war without the approval of the Congress. I am very much impressed with your resolution.

I am particularly impressed with the remarkable cosponsorship that you have attracted. You have a most representative group of cosponsors representing all wings of thought in the House, and I think it is a remarkable achievement.

Mr. Chappell. Thank you, sir.

PROBLEMS OF SETTING 30-DAY LIMITS

Mr. Bingham. I don't know if you heard my testimony earlier and I don't want to dwell on the points, but I do have reservations about forcing the Congress to act on this matter within a certain specified length of time. I think unless you have some provision to protect against a filibuster, no matter what time limit you set, if you don't have some provision against that, you would permit two or three Members in the other body to prevent the Congress from acting and require the termination of the hostilities whether or not that was the will of majority of the Congress. The danger there is that a few Members, a very small minority perhaps, could paralyze the action that the country might want to take and that the majority of the Congress might want to take.

Your 30 days are much more measurable than the 30 days in the Javits proposal because you have set it as 30 days from the time the report is submitted. The difficulty that strikes me there is what happens if the President simply does not submit the report and just goes ahead without submitting the report? What then?

Mr. Chappell. Of course we are in the same kind of category we find ourselves in when he does not take on something else where he is constitutionally or otherwise required to. This type of requirement,
I think, would subject the President to impeachment in the event the Congress felt strongly enough about it.

I have no objection to an amendment which says that "within so many days after the engagement * * *," I think we could say in the event he failed to do so. Within that prescribed time, then, it shall date from the time of the actual date of the conflict or the engagement of our forces in conflict. I think that would remedy the problem, Mr. Bingham. It should be considered a real serious one.

DESIRABILITY OF PERIODICALLY RENEWING WAR AUTHORITY

Mr. BINGHAM. What would you say as to the desirability of having some sort of requirement that this authority be renewed every so often, as Mr. Horton suggested earlier? In other words, are you satisfied that once given, that should be enough, or should it be renewed every year? We have had this Vietnam thing going on now for 6 years.

Mr. CHAPPELL. Mr. Bingham, this sort of thing gives me concern as it does most of us. On the other hand, if we could get the Congress alerted to assuming its responsibilities, that which it giveth it can take away and that which it authorizes it can reverse, then it seems to me that if the Congress found in any given time that this conflict had gone on long enough, the Congress could stop it. There is no reason why it couldn't. There is nothing that would prohibit it from stopping it here. There is simply the requirement that it be reviewed every so often.

Another thing that concerned me about the Vietnam situation is that the President was given almost a blank check to do all of those things he deemed necessary in that area of the world. I think this is the thing that maybe the resolution, if you could find the proper wording, should tie down so that we don't just give cart blanche authority to one man, and I think that is what our Founding Fathers were concerned about, that we might vest it in one person, this power to make war. So, they were trying to prohibit it.

Again, I don't know how this Congress can tell the next one exactly what it must do. So somewhere along the line we have to assume that both the President and the Congress will be responsible and act responsibly under these circumstances.

This is simply a device, as I see it, to get Congress to do that which it should already have done and should already be doing with reference to the warmaking power.

WISDOM OF "ONE HOUSE VETO" PROPOSAL

Mr. BINGHAM. One more question. On the continuation of this authority, may I point this out to you, that under your procedure both Houses would have to concur in the authority granted, but once that authority has been granted it could be repealed only by action of both Houses. In other words, if one House after the end of 2 years decided it had enough and didn't want the President to carry on, nevertheless that House could not act to impede the President. In a way, one House alone could not act to repeal the authority granted by both Houses.

Mr. CHAPPELL. Mr. Bingham, I believe that both Houses should be required to act. As a matter of fact, one of the weaknesses I see in the present Constitution is that with reference to the treatymaking power we have left that authority conferred in only one body. I think
that has gotten us into lots of difficulties. I think there is an area for real study.

I think that if both bodies of the Congress were required to affirm or confirm the commitments we make under the treaty-making power many of our problems might be averted. Certainly, we could, today, put in a specific exception in a bill of this sort and say "excepting treaties made under the Constitution" that these things would happen.

I think we would have a much better way of doing things, but all of us recognize that is a long way, the long way around, too.

WAR AUTHORITY REQUIRE TWO-HOUSE APPROVAL?

Mr. BINGHAM. Following that very line of thinking, wouldn't you say that the President's power to carry on hostilities without a declaration of war is such an extraordinary power that he should not be in a position to exercise it unless he has the continuing approval of both Houses?

Mr. CHAPPELL. I concur that at any time we find ourselves in a circumstance where the people are so disunited as, for example, now, that there ought to be a good way to trigger the action which would be necessary for disengagement. I personally believe that a device similar to the one before us might have prevented the problems of Vietnam as we know them. Congress would have said one or two things: "Let us get in there and win it, Mr. President, with all that we have, and we are going to make the appropriation," or "Stay out."

First, I don't believe we would have gotten into that circumstance, as we did, one in which we were not going to permit our young people to win. We teach them not to fight unless they have to; but if they are going to fight, get in to win, then we send them into a situation like Vietnam and we won't let them win. It is that kind of attitude, I believe, this sort of law might be very helpful in preventing.

Certainly that is my intent in doing so.

I would like to comment further. Your bill, H.R. 4194, I commend the gentleman on that subsection (b) of section 2. I think with some changes perhaps he is on the right track. I am not sure that the times in there are right. As in my bill, I am not sure the times are right, but I think it is heading in the direction to solve the problems of a filibuster.

Mr. Bingham, I am not sure I was responsive to your last question.

Mr. BINGHAM. On the last point, I did mention earlier that that language, subsection (b), is taken from Senator Javits' bill. I think it was aimed at the filibuster problem.

I appreciate your comments. Certainly I fully agree with the general thrust and purpose of your resolution.

Mr. CHAPPELL. Thank you, sir.

PERIODIC RENEWAL OF TREATIES

Mr. ZABLOCKI. Again, I want to commend you for appearing before the subcommittee. You certainly have contributed to a better understanding of the problem we are grappling with. I think your resolution has merit. I want to second your comment that the House of Representatives should have the right to approve treaties, since it has to carry out the obligations of treaties.
We discussed last year whether treaties ought not to have a termination date of 10 years, 15 years, or 20 years, and be reviewed periodically, since the world situation changes from time to time. Would you care to comment?

Mr. CHAPPLE. Mr. Chairman, I think definitely they ought to. I think the provision, which I understand is written in most of them, that the treaties are subject to constitutional action or determination on the part of Congress leaves an out. In other words, I think it really leaves us in a position where perhaps if the two bodies, if the matter did come back even by reporting process such as this where an engagement of troops actually took place because of a treaty arrangement, that again this would be one way of reviewing those. I do believe that right now the Congress would have an opportunity to, in essence, abrogate if they wanted to do it; but I certainly would not advocate it because I think where we have committed this Nation by way of agreement, we must stick to it. I think we must always honor our word and our commitment.

I do think the point is well made, and that these treaties either ought to be reviewed periodically or we ought to make them for a lesser period or ought to have the concurrence of both Houses.

ADJOURNMENT

Mr. ZABLOKI. Thank you, again, Mr. Chappell.

The subcommittee will meet again tomorrow in this room at 2 p.m., to continue hearings on war powers bills and resolutions.

The subcommittee is adjourned.

(Whereupon, at 4:15 p.m., the subcommittee adjourned, to reconvene at 2 p.m., Wednesday, June 2, 1971.)
WAR POWERS LEGISLATION

WEDNESDAY, JUNE 2, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON NATIONAL SECURITY
POLICY AND SCIENTIFIC DEVELOPMENTS,
Washington, D.C.

The subcommittee met at 2 p.m., in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the subcommittee) presiding.

Mr. Zablocki. Today we are continuing the hearings of the Subcommittee on National Security Policy and Scientific Developments on pending bills and resolutions which would affect the war powers of Congress and the President.

INTRODUCTION OF CONGRESSMAN SISK

Our first witness this afternoon is Hon. B. F. Sisk of California. Mr. Sisk is the author of H.R. 8448, to define the authority of the President of the United States to intervene abroad or to make war without the express consent of the Congress.

Mr. Sisk is a distinguished Member of Congress and it is a pleasure for me to welcome him before this subcommittee.

Following his presentation, the subcommittee will hear from representatives of the executive branch.

We welcome you warmly and look forward to your testimony, Mr. Sisk. You may proceed with your statement.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Sisk. Thank you very much, Mr. Chairman. I will not infringe on the time of the subcommittee.

Mr. Chairman and members of the subcommittee, Congress is increasingly being informed after the fact or coerced into approving executive war actions under the duress of events.

This happened in Vietnam even when it was not necessary for military maneuvers. I think all of us are willing to allow the greatest latitude in military operations when it will help the success of a campaign.

Recent actions have called into question our acquiescence in this matter.

The Tonkin Gulf resolution to some extent led to the massive military intervention into South Vietnam. We were informed that drastic
U.S. military intervention was necessary to prevent the cutting in two of South Vietnam.

There is no reason to disbelieve this would have taken place. But this opened the door to a Pandora's box of subsequent actions in augmentation of U.S. Armed Forces which still has Members of both Houses of Congress debating their wisdom in voting for the resolution.

Most recently, there was the invasion of Cambodia and Laos.

During the Vietnam war, military actions in surrounding countries were made without consulting Congress. Members of Congress found out about it by reading the morning newspaper.

The risk of the lives of our fighting men, Mr. Chairman, is the concern of all of us, private citizens and public officials alike. This is all the more reason for us to be kept fully informed of administration war plans.

Because in most past wars, the executive branch has acted with commendable restraint or the pressures of defense was so great, this issue has not been so sharply focused as today.

EXPLANATION OF HOUSE RESOLUTION 8446, THE SISK BILL

With this in mind, I have introduced H.R. 8446, which the Subcommittee on National Security Policy and Scientific Developments is considering with other war power legislation today.

H.R. 8446 would define the authority of the President to intervene abroad or to make war without the express consent of the Congress.

The bill would prohibit the President from deploying the Armed Forces of the United States outside the country, except for peaceful purposes, unless specifically authorized by the Congress.

Certain exceptions are made to avoid too stringently restricting the President.

One exception would allow the President to act on the advice and consent of the Senate in connection with treaty matters.

The bill would allow the President to act on his sole discretion in deploying the troops if he found the territory of the United States under attack or under imminent threat of attack or to fulfill a specific treaty obligation of the United States.

In the event of a declaration of war by the Congress, the President could deploy the Armed Forces only in countries specifically named, unless the safety of the American or allied forces were at stake.

Even in this event, the President would be required to notify the Congress 24 hours after any action deploying the Armed Forces and in the event Congress is not in session, to call an extraordinary session within 24 hours.

The same subcommittee, Mr. Chairman, last year found that legislation to restrain executive use of military power is necessary.

As Congressmen, we do not want the Congress to take over the responsibility of the President as Commander in Chief of our Armed Forces.

Neither do we want him to usurp the direction of foreign policy, taxation, and expenditures which are solely vested in Congress.

Mr. Chairman, I urge the subcommittee judicious consideration not only of this bill but other bills which I understand are pending before your committee.
Thank you very much, Mr. Chairman, for this opportunity to make a brief statement.

VIEW OF HOUSE JOINT RESOLUTION 1

Mr. ZABLOCKI. Thank you, Mr. Sisk, for your statement. I know you supported the resolution that was reported by the Foreign Affairs Committee and adopted by the House last Congress.

Mr. SISK. That is right.

Mr. ZABLOCKI. You are familiar with House Joint Resolution 1, which is almost identical, just a bit stronger than the resolution we passed in the last Congress.

Do you feel that this resolution goes far enough or too far?

I ask this question because I know in your bill, H.R. 8446, you call for the President to report but you don't require him to consult Congress or to keep Congress informed during hostilities.

Mr. SISK. Let me say this, Mr. Chairman, with reference to the other resolution.

It is House Joint Resolution 1?

Mr. ZABLOCKI. House Joint Resolution 1, yes.

Mr. SISK. I would find no particular fault with that resolution.

Now, in connection with the powers of the President as Commander in Chief and in the event, of course, of an attack, I think there are times that the President in the best interests of our country is going to have to act quickly.

Here, it was my desire to try to make certain that we do not tie the hands of the President to act in that kind of an emergency.

Of course, if he feels that it is necessary to act, then he immediately may inform the Congress within 24 hours of what he has done.

At a time when we were not in session and in his judgment a very serious and imminent threat did exist, then I would not want to restrain his right to act by the necessity of consulting, where it would be impossible without at least a certain lapse of time.

This is the reason, I guess, that I put the provision in rather than requiring in every case that he consult prior to the action. I would visualize, for example, a situation, like the December 7 attack at Pearl Harbor.

No one, of course, has any desire to restrain or restrict the President and the military in immediate answer to that kind of thing.

But there could be other situations where an attack might be considered to be so imminent as to make it impossible to consult.

That is what I had in mind.

SETTING CRITERIA FOR PRESIDENTIAL ACTION

Mr. ZABLOCKI. We had quite a discussion on the desirability of, and the opposition to, stating and listing the exceptions under which the President could act.

I note you list three criteria as exceptions to the prohibition against employing troops during hostilities outside the United States.

Under these three criteria could the President respond, for example, to an attack on Israel?

Mr. SISK. Here, again, it would depend to some extent on circumstances. I think under certain kinds of circumstances he could.
Now, the general tenor of my resolution would make it impossible for the President to send troops to Israel without approval of the Congress.

Because here is a situation that has certain pending dangers. We recognize the explosiveness of the situation.

Again, I think the area in which the President would be permitted to act would be in the event of a surprise maneuver in the Caribbean, where very suddenly and unexpectedly a situation developed endangering American citizens or American troops. The President might find it necessary to move in quickly to stop that kind of adventure and then consult the Congress within 24 hours and explain the reasons why.

This is where I would want to give him latitude. I question the advisability of making it impossible for him to move quickly.

In the event there was a sudden attack on Guantanamo, certainly I would not wish to restrict his right to go into Cuba or to do whatever is necessary to protect our people, both civilians and military, and then inform the Congress within 24 hours of what he has done.

We have to rely on the President and his integrity to make decisions in times of stress and this is what I am attempting to do—to leave him that decision power.

**WHY HOUSE JOINT RESOLUTION 1 SETS NO CRITERIA**

Mr. Zablocki. I certainly agree with you on that. That is the specific reason why in House Joint Resolution 1 we did not attempt to set specific conditions under which troops may be committed because there might be a misinterpretation or by our omissions the President would not have a free hand in some future situation.

I wondered how strongly you felt about setting the exceptions in legislation.

Mr. Sisk. I leave that up to the subcommittee because I feel sure that members of his subcommittee are far better informed than I am.

As I said, the writing in specific exceptions was an attempt to set specific limitations but leave the President the freedom of option under a particular set of circumstances.

The thing I am concerned about is the situation we have fallen into in the past 20 or 30 years. We have intervened here and there and then found ourselves in a full-scale war without any action of the Congress.

I am not criticizing any President for having done this. But I think it is stretching beyond reason the constitutional powers of the President to commit troops to battle actions in foreign areas without the approval of the Congress.

This is what I want to see stopped. If Congress declares war then both executive and legislative branches are exercising constitutional prerogatives under constitutionally perceived restraints.

It may be that the language in House Joint Resolution 1 would be better. Certainly if the committee reports it I would support House Joint Resolution 1, Mr. Chairman.

Mr. Zablocki. I would like the record to show that the gentleman from California is much too modest. He has been in the forefront in the formulation of legislation in the area of delineating or clarifying the war powers of Congress and the executive branch. I want to commend him for his past efforts.

We look forward to his counsel and advice in this area in the future.