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THE IMPACT OF U.S. DOMESTIC LAW ON THE LAST DAYS OF AMERICAN PR--ETC(U)

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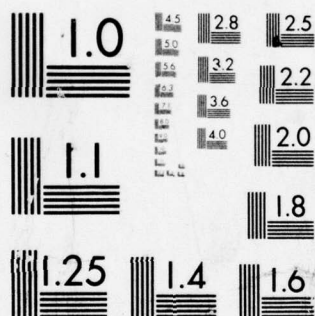


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THE IMPACT OF U.S. DOMESTIC LAW
ON THE LAST DAYS OF AMERICAN PRESENCE IN VIETNAM

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Tom Carhart

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THE IMPACT OF U.S. DOMESTIC LAW
ON THE LAST DAYS OF AMERICAN PRESENCE IN VIETNAM

Tom Carhart
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I. THE ISSUE

For many years, the United States was significantly involved in helping the Republic of Vietnam survive in the face of considerable political and military threats. In early 1968, the U. S. Government began to rely more on logistical support and gradually to disengage its forces from the actual conduct of the war. These actions were the result of considerable domestic concern over our activities in Indochina, and reflected the rather widely shared sentiment in the United States that the fight for Vietnam should be carried on by Vietnamese. By mid-1973, the conduct of the war was managed and carried on almost entirely by Vietnamese, and most members of the U.S. armed forces had been removed from South Vietnam.

In July 1973, the U.S. Congress passed a law (Public Law 93-50) that forbade the expenditure of funds in support of combat activities in or over Cambodia, Laos, North Vietnam and South Vietnam by U.S. forces after 15 August, 1973. In November, 1973, the War Powers Resolution was passed by both Houses of Congress over a Presidential veto, and became Public Law 93-148. ^{IMPACT OF THESE WHICH} These two laws seem to preclude rather rigidly the reappearance of U.S. armed forces in the Indochinese war, ^{is discussed in this report}

In mid-March, 1975, President Thieu of the Republic of Vietnam decided unilaterally to abandon certain areas of the Central Highlands to Communist forces, and the orderly withdrawal of military forces from those areas was attempted. This sort of movement is conceded by most military analysts to be among the more difficult of military maneuvers, particularly for troops of uncertain discipline. For a variety of military, social, and political reasons, the Vietnamese withdrawal quickly dissolved into an utter rout. Suddenly, the United States was faced with the prospect of having the country on which she had spent incalculable blood and treasure disintegrate. The immediate concern of

-1-

the Executive branch was the rescue of U.S. as well as some South Vietnamese citizens before the Communist forces took full control. This study examines the military situation as it developed chronologically, based primarily on reports published in the New York Times. It attempts to provide some insight into the limitations placed on the American effort by the two laws alluded to earlier. Finally, it explores the latitude the President may have had in any proposed support or rescue effort.

II. THE LAW

Since the middle 1960s, Congress has begun to reconsider its relative acquiescence in the massive accumulation of war powers by the Office of the President. The Cambodian incursion of May, 1970, provided the initial impetus for a number of bills and resolutions on the exercise of the war powers. The incident occasioned considerable unrest and dissatisfaction over the lack of prior consultation with Congress and a near crisis in relations between the Executive and Legislative branches. Testimony before the 91st, 92nd, and 93rd Congress seemed to confirm the view of many Americans that the primary authority over committing the United States to a state of war had swung heavily to the President. In order to restore the balance between the Executive and Legislative branches provided for in the Constitution, Congress attempted to reassert its role with appropriate legislation.

These efforts were unsuccessful in 1971 and 1972, but on 29 June, 1973, Congress completed action on the second supplemented appropriation bill for fiscal 1973. As signed into law by President Nixon on 1 July, 1973, HR 9055 (Public Law 93-50) contained a provision that would cut off funds for combat activities in Indochina after 15 August, 1973. The specific text of the pertinent section of this law reads as follows:

None of the funds herein appropriated under this act may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam and South Vietnam by United States forces, and after August 15, 1973, no other funds heretofore appropriated under any other act may be expended for such purpose.

In addition, in November 1973, Congress overrode a Presidential veto of the War Powers Resolution, which significantly limited Presidential freedom in control of the military, and it became law. The text

of this legislation can be found in appendix A, but its important provisions can be synopsized as follows:

1) It is the purpose of the Joint Resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of U.S. armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

2) Congress has the specific power, under Article I, Section 8 of the Constitution, to make all laws necessary and proper for carrying into execution not only its own powers, but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

3) The President can introduce U.S. armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, only pursuant to:

- a) a declaration of war (by Congress),
- b) specific statutory authorization (passed by Congress), or
- c) a national emergency created by an attack upon the United States, its territories or possessions, or its armed forces.

4) Authority to introduce U.S. armed forces into actual or potential hostilities shall not be inferred from any provision of law, including any provision contained in any appropriation Act, unless the provision specifically authorizes the introduction of armed forces and states that it is intended to constitute specific statutory authorization within the meaning of the War Powers Resolution.

5) Similarly, authority to introduce U.S. armed forces into actual or potential hostilities shall not be inferred from any ratified treaty, unless it is implemented by legislation specifically authorizing such introduction and stating that it is intended to constitute specific statutory authorization within the meaning of the War Powers Resolution.

6) The President must report in writing within forty eight hours to the Speaker of the House of Representatives and the President pro tempore of the Senate on any commitment of U.S. armed forces to hostilities or to situations where imminent involvement in hostilities is clearly indicated by the circumstances, or any commitment or substantial enlargement of U.S. forces equipped for combat in the territory, airspace, or waters of a foreign nation, except for deployments relating solely to supply, replacement, repair, or training of such forces. In his report, the President must set forth:

- a) the circumstances necessitating the introduction of United States armed forces;
- b) the constitutional and legislative authority under which introduction took place; and
- c) the estimated scope and duration of the hostilities or involvement.

7) Sixty days (with an additional thirty day grace period provided for the safety of the troops only) after the President's initial report on the commitment of U.S. armed forces to hostilities or to situations where imminent involvement in hostilities is clearly indicated by the circumstances was submitted or was due to be submitted, unless Congress has declared war, specifically authorized continuation of the commitment, or was physically unable to convene as a result of an armed attack upon the United States, the President must terminate the armed forces commitment.

8) At any time U.S. military forces become engaged in hostilities without a declaration of war or specific statutory authorization, Congress can pass a concurrent resolution directing the President to disengage such troops. This concurrent resolution requires a simple majority vote in each House for passage, and does not require a Presidential signature to become effective.

9) The President in every possible instance shall consult with Congress before introducing U.S. armed forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until U.S. armed forces are no longer engaged in hostilities or have been removed from such situations.

III. THE DEBACLE

During March 1975, the military situation in the northern two-thirds of the Republic of Vietnam rather quickly changed from one of relative stability into virtual collapse and near-anarchy. The chronological development of this experience is traced below as accurately as possible, drawing primarily on New York Times accounts as the source of our information. Given the circumstances, this review does not completely set out either the actual events that took place or the factors that brought them about. The common theme, however, of the Congressionally-enacted laws that limit U.S. intervention in the Republic of Vietnam, will be our primary concern. The actions that may have been affected by these laws are addressed in the order of their occurrence.

Some time in the first week of March, the North Vietnamese and Viet Cong launched a limited offensive operation in the Central Highlands of South Vietnam. On 13 March Ban Me Thout (the capital of Darlac province) fell into Communist hands. At some point over the next few days, President Thieu apparently decided unilaterally to abandon three inland provinces in the Central Highlands, to include Darlac, to the Communist forces. The hinterland of the Republic of Vietnam north of Saigon is made up of very sparsely populated, jungle covered, mountainous terrain. Population centers are widely dispersed, and supply lines are long and must pass through densely vegetated areas that have long been contested. The Viet Cong and North Vietnamese Army have operated rather freely in these areas, primarily because of their remoteness from the civilian population. Over half of the population of the Republic of Vietnam lives in the Mekong delta south of Saigon.

On 18 March, with no prior warning, the Army of the Republic of Vietnam (ARVN) announced that it was abandoning Darlac, Kontum, and

Pleiku provinces in the Central Highlands. The army received orders to move East from their isolated fortresses toward the coast. This order was received by an army whose discipline and training were somewhat open to question, and the civilian population soon learned of the order. Historically, whenever the ARVN abandoned an area to the Viet Cong or North Vietnamese Army (NVA), the area was thoroughly bombed (often by B-52's) as soon as the ARVN units were withdrawn. It is not known whether the Vietnamese civilians feared this or feared the actual arrival of the Communists, but all of the few roads in the area were soon choked with civilian refugees seeking safety. The military withdrawal seems to have been carried out somewhat precipitously, and a considerable amount of military equipment was simply abandoned. Military organization quickly became rather blurred, and the roads were soon packed with Vietnamese, with and without uniforms, streaming in panic towards the sea. This panic seems to have been somewhat infectious, and on 20 March, it was reported that refugees were beginning to choke the roads leading south from Quang Tri and Thua Thien provinces, the two northern-most provinces in South Vietnam. On 22 March, three additional provinces were conceded to the Communists, and the ancient imperial capital city of Hue was reported "endangered." In fact, some time within the next few days, Hue was simply abandoned by the South Vietnamese military and other governmental forces. Highway 1, from Hue south some fifty miles to Danang, had been choked with refugees and military traffic for several days. Danang, as the second largest city in South Vietnam, was a major headquarters area for South Vietnamese military forces. On 25 March, Danang was reported to be "cut off" by surrounding Communist forces; on 26 March, two more provinces surrounding Danang were formally conceded. On 29 March, another province was conceded to the Communists, and rocket fire into the Danang airfield was reported. At this point, the Departments of State and Defense both reported that their lawyers had advised them that military ships and planes could not be used to evacuate refugees from Danang. This seemed to be in keeping with the specific

precepts of both laws with which we are here concerned. On 30 March (Easter Sunday) actual control of Danang passed to the North Vietnamese. However, the streets of Danang were filled with thousands of panic-stricken armed deserters from South Vietnamese military units. Anarchy set in and there were numerous accounts of lawless and ruthless acts in Danang itself. At the airport, a World Airlines 727 landed to evacuate women and children, but was mobbed by deserters. Some twenty to thirty people were killed, either run over by the airplane, fallen from the wheel wells, or killed in gunfire between deserters on board the aircraft and those who chased it down the runway in jeeps, ambulances, motorcycles, and fire trucks.

Although it was acknowledged on 31 March that Communists controlled Danang, efforts were still planned for the United States to aid in evacuation. President Ford's press secretary, Ron Nessen, said that U.S. Navy ships to be used in evacuating Danang "will not enter the combat areas or participate in any hostilities;" ships would be stationed "well out from the Vietnam coast and would probably be out of range of North Vietnamese guns." Nessen claimed that U.S. Navy evacuation ships would not constitute a violation of Section 3 of the War Powers Act, because they would not be introduced into situations implying imminent hostilities. This, however, would be at least a debatable point. Nessen said that President Ford "is informing Members of Congress in keeping with the spirit of the War Powers Act" (emphasis added). Section 3 of the War Powers Act states that:

"The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations" (emphasis added).

In order to determine whether President Ford would be operating within the bounds of the law by simply "informing Members of Congress" that he was sending military forces into potentially hostile situations,

we must look at the legislative history of the War Powers Act. For this consultation section, we must look at the War Powers Resolution passed by the House of Representatives, as reported on page 2350 of the U.S. Code Congressional and Administrative News, 1973. The legislative history there recorded reads as follows:

"Section 2. Consultation

This section directs that the President 'in every possible instance shall consult with the leadership and appropriate committees of the Congress before committing United States Armed Forces to hostilities or to situations where hostilities may be imminent.' (Note - in conference with the Senate, this wording was changed slightly, most importantly requiring consultation with "Congress" rather than with the "leadership and appropriate committees of the Congress.")

The use of the word "every" reflects the committee's belief that such consultation *prior* to the commitment of armed forces should be inclusive. In other words, it should apply in extraordinary and emergency circumstances-even when it is not possible to get formal congressional approval in the form of a declaration of war or other specific authorization.

At the same time, through the use of the word "possible" it recognizes that a situation may be so dire, e.g, hostile missile attack underway, and require such instantaneous action that no prior consultation will be possible. It is therefore simultaneously *firm* in its expression of Congressional authority yet *flexible* in recognizing the possible need for swift action by the President which would not allow him time to consult first with Congress.

The second element of section 2 relates to situations *after* a commitment of forces has been made (with or without prior consultation). In that instance, it imposes upon the President, through use of the word "shall", the obligation to "consult regularly with such Members and committees until such United States Armed Forces are no longer engaged in hostilities or have been removed from areas where hostilities may be imminent."

A considerable amount of attention was given to the definition of consultation. Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances,

their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relevant to the situation must be made available.

In the context of this and following sections of the resolution, a *commitment* of armed forces commences when the President makes the final decision to act and issues orders putting that decision into effect.

The word *hostilities* was substituted for the phrase *armed conflict* during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which fighting actually has begun, *hostilities* also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. "*Imminent hostilities*" denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict" (emphasis in original).

It would seem, therefore, that while "informing Members of Congress" of proposed use of the U.S. military might be "in keeping with the spirit of the War Powers Act," it is pretty clearly not in accordance with the specific requirements of the law.

On 1 April, Hue and Danang were formally conceded by the South Vietnamese government to their Communist adversaries. Evacuation of refugees from Danang was suspended because the Viet Cong and the North Vietnamese Army were firing rockets at the barges and tugboats ferrying refugees to ships offshore. The U.S. Navy announced that it would be used to evacuate "helpless civilians" from the cities of Qui Nhon, Tuy Hoa, and Nha Trang. Any military man "who was no longer a part of an organized military unit" was to be considered a civilian. If U.S. Navy ships were to be sent into Vietnamese territorial waters, the President would be compelled by the War Powers Act to report this fact to the Congress. The President would not be allowed, according to the War Powers Act, to send U.S. Navy ships into hostile situations without prior authorization by Congress. If the ships were expecting to be fired upon by North Vietnamese rockets in the performance of their assigned duties, that would seem to be sufficient evidence that they were being placed in at least a potentially hostile situation.

At this point, the government of South Vietnam controlled the Mekong delta (south of Saigon), an area immediately surrounding Saigon itself, and a narrow strip of land along the coast, reaching as far north as Qui Nhon. On 2 April, Qui Nhon was abandoned by the South Vietnamese government, and Tuy Hoa, Nha Trang, and Camaranh Bay were "gravely threatened," primarily because of disorder bordering on anarchy among civilian refugees and armed military deserters. Four U.S. Marine rifle companies were reported to be aboard U.S. Navy ships that would be used to evacuate refugees. The Department of Defense said that the Marines "will not depart the shipboard evacuation control." The first resupplies for the Vietnamese army (primarily artillery and ammunition) arrived at Tan Son Nhut airport in Saigon on board a U.S.A.F. C-5A transport airplane. On 3 April, Tuy Hoa, Nha Trang, Dalat, and Camaranh Bay were reported "lost" to Communist forces.

Fighting lulled at this point, apparently because the North Vietnamese and Viet Cong forces could not keep up with the headlong panic-stricken flight of the South Vietnamese army and civilians. On 5 April, U.S. Navy ships were used for the first time to evacuate refugees, this time from Phan Rang (previous evacuations were carried out by civilian ships under charter to the U.S. government). So long as these ships were not being sent into hostilities (or "into situations where imminent involvement in hostilities is clearly indicated by the circumstances"), then the President could legally order them to proceed with the evacuation. However, he must still report on this to the Congress within forty-eight hours. It would seem that, given the absence of hostilities involving these U.S. Navy ships, the order was within the limits of legality laid out by the War Powers Act.

On 6 April, ARVN deserters were being sent on board U.S. ships from Phan Rang to Phu Quoc island in the China Sea. They retained their weapons, however, and those aboard the Greenville Victory mutinied and forced the crew (at gunpoint) to return them to the port of Vung Tau, near Saigon. On the same day, President Ford, allegedly in accordance with the War Powers Act, informed "Congressional leaders" that U.S. Navy ships were entering Vietnamese waters to evacuate refugees from Phan Rang. On 7 April, two more shiploads of deserters being sent to Phu

Quoc Island mutinied and forced the crews to take them to Vung Tau. On 10 April, an attack on Xuan Loc, some twenty miles north of Saigon, was reported repulsed. The South Vietnamese government had to commit airborne battalions, its strategic reserve, in order to achieve this, however. North Vietnamese missile firing boats were reported moving down the Vietnamese coast and might endanger evacuation by U.S. ships. On 11 April, fighting at Xuan Loc continued, but Communist forces were said to be slipping around that town and moving closer to Saigon. President Ford asked Congress for authority to use U.S. troops to protect the evacuation of Americans and Vietnamese nationals "to whom we have a special obligation and whose lives may be endangered should the worst come to pass." The President was not very specific, but he appeared to be asking Congress to make clear the fact that under the War Powers Act, he had the authority to use troops to protect the evacuation effort. In fact, he does not have this authority according to the War Powers Act, but Congress could give it to him by passing a specific bill to that effect. President Ford said, in his message to Congress concerning U.S. Navy ships entering Vietnamese waters to pick up refugees, that use of ships was "undertaken pursuant to the President's constitutional authority as Commander in Chief and chief executive in the conduct of foreign relations, and pursuant" to a 1973 amendment to the Foreign Assistance Act which authorizes "humanitarian assistance to refugees, civilian war casualties and other persons disadvantaged by hostilities." This is somewhat of a moot point, since hostilities involving the use of U.S. Navy ships apparently did not develop. If they had, however, or if the situation they were sent into were truly one where "imminent involvement in hostilities is clearly indicated by the circumstances," then this would not have been a legally acceptable basis for the President's actions. The War Powers Act specifically delineates the constitutional freedom of action retained by the President as Commander in Chief of the U.S. armed forces, and the extent to which congressional involvement in military decisions is required. It also

specifically states, in Section 8(a) (1), that authority to use U.S. armed forces "shall not be inferred from any provision of law" unless the provision "specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution." The 1973 amendment alluded to by President Ford was designed to authorize a program of postwar reconstruction in Indochina and makes no mention of the use of U.S. armed forces.

On 12 April, the Xuan Loc engagement continued. Senator Javits, one of the sponsors of the War Powers Act, said that the President has limited authority under the War Powers Act to use troops to evacuate American citizens, but this contention was disputed by Senators Byrd and Eagleton. On 13 April, with the battle for Xuan Loc not yet ended, it was believed that many Communist demolition teams were already in Saigon awaiting the signal for an uprising à la Tet, 1968. Some concern was expressed by government sources that U.S. Marines might not be able to evacuate Americans in Saigon safely given either a major Communist attack or civil disorder. The Viet Cong said that they opposed U.S. evacuation of Vietnamese nationals, but that, in the event of a Communist takeover, foreigners "who lead honest lives can expect to be well treated." On 14 April, Senator Javits said that while President Ford would not need congressional permission to use a small number of U.S. troops in South Vietnam to evacuate American citizens, he (the President) would require a congressional resolution before U.S. troops could be used to evacuate an estimated 200,000 South Vietnamese whom the Administration feared would be punished by the Viet Cong for cooperating with the United States. Senator Javits said further that both the Constitution and the legislative history of the law limiting introduction of American forces into Indochina gave President Ford power to use a small force to evacuate American citizens. But if "an unusually large number of troops-just for the sake of an order of magnitude, a division (12,000-18,000 men) - had to be employed, then he would need the immediate concurrence of Congress to spend that kind of money. On the other hand,

if a company of Marines could do it, then I believe that within the Constitution he can do that," Javits said. He said that Mr. Ford has "no authority whatever" to evacuate Vietnamese without approval by Congress. Javits said that Saturday's evacuation of 159 Cambodians aboard Marine helicopters was "simply a power the President took unto himself on the theory that you're not going to sue him and enjoin him when they're already out." On 15 April, President Ford met in camera with the Senate Foreign Relations Committee. At that meeting, he was said to have taken the position that he had inherent powers as Commander in Chief to use American troops to protect Americans and that no legislation was necessary if only American citizens were to be evacuated. President Ford and Secretary of State Kissinger reportedly said they would appreciate an expression of agreement from Congress on that legal point.

The issue confronted by the President in considering whether he should use U.S. forces to evacuate Americans from Vietnam was a delicate one. His freedom of action seems to be most severely limited by the War Powers Act. Although Senator Javits was a primary supporter of the War Powers Act, his interpretation does not seem to be entirely sound on legal grounds. What the President can do in the real world (and, by implication, get away with politically) is a wholly different issue from what he may do under the law. Senator Javits, in his statements about the President's freedom to use a small number of troops, particularly when he analogized to Cambodia, seemed to be talking about the former case. In his position, that was probably an appropriate stance: to consider realistically what might happen. However, if we take a step back and reconsider, things appear in a somewhat different light. We must first assume that the intention of the lawmakers is fairly expressed by the wording of the law--i.e., that they did not mean to include or exclude something that is specifically absent or present in the body of the law at it was passed by Congress over a Presidential veto.

Next, we must assume that the President will abide by the Constitution and his oath of office to insure that the laws are faithfully executed. This especially means that he will not intentionally step beyond the specific limits of the law, no matter how justified as he may feel in so doing.

The Constitution speaks in very broad and general terms in this area, simply noting that the President is to be the Commander in Chief of the armed forces. It says nothing whatever about his rights or duties to protect American citizens abroad. The War Powers Act has attempted to specify the control of the military by Congress and the President jointly, in order to fill in gaps left by the Constitution in what are seen, by Members of Congress, to be appropriate ways. The War Powers Act is now the controlling law in this area. When it was in its formative stages, the possibility of the President using U.S. forces to rescue Americans abroad was perceived. In the original Senate bill (S.440), a specific provision permitted the President, without prior Congressional approval, to introduce U.S. military forces overseas during an emergency situation only to (among other things) protect while evacuating U.S. citizens and nationals whose lives were threatened. While for some people this may seem to be an appropriate circumstance for Presidential freedom of action unhampered by any need for prior Congressional approval, the joint conference between the House of Representatives and the Senate on the War Powers Resolution apparently did not share this feeling. During the conference, this wording was dropped in its entirety, and the resultant section of the War Powers Resolution provided that the President could only insert U.S. armed forces into actual or potential hostilities pursuant to: (a) a declaration of war by Congress, (b) specific statutory authority passed by Congress, or (c) an attack upon the United States, its territories or possessions, or its armed forces. Accordingly, before the President could legally insert U.S. armed forces into a potentially hostile situation to protect while evacuating U.S. citizens, legislation specifically permitting this would have to be passed by both Houses of Congress.

If the U.S. embassy in Saigon had actually been attacked, of course, the situation would have changed dramatically. U.S. embassies are clearly part of U.S. territory; an attack upon an embassy would constitute de jure authorization for the President to insert U.S. forces in defense of that piece of U.S. territory, with no prior Congressional approval required. This is a very narrowly constrained circumstance, however. Insertion of U.S. military forces into the Republic of Vietnam under any other circumstances (assuming actual or potential hostilities) would have required precedent specific Congressional authorization in order for it to be available to the President as a legally permissible option. This is equally true for virtually any scale of insertion, whether the President chose to use a company of Marines or several U.S. Army divisions.

On 16 April, Bien Hoa airport near Saigon was closed by Communist artillery fire, and Phan Rang abandoned to the Communists. On 18 April, the Senate Armed Forces Committee rejected additional military assistance to the Saigon government. The House International Relations Committee approved legislation giving the President limited authority to use U.S. armed forces to evacuate Americans from South Vietnam. But the Senate Foreign Relations Committee withheld action on a similar bill because its members were dissatisfied with the pace at which Americans and their dependents were being evacuated. General Weyand, U.S. Army Chief of Staff, confirmed that North Vietnam was moving surface-to-air missiles into the area around Saigon, and that the sites were likely to be in place by May. This meant that, once the missile sites were in place, it would be more dangerous for Americans to be flown out of Saigon, and the peril of supplying Saigon by air would be increased. Moreover, if it were announced that, when these missiles were in place, they would be used against U.S. military aircraft flown over Vietnamese territory, that would place the aircraft in at least a potentially

hostile situation, and no legal airlift of supplies into Saigon could have taken place in U.S. Air Force planes without prior statutory authority given by Congress.

On 16 April, intelligence reports indicated that there might be ten to twelve North Vietnamese divisions in the Saigon area, preparing for an attack at any time, against four ARVN divisions plus militia. Military analysts said that Hanoi's tactics seemed to be to seek the destruction of Saigon's remaining forces outside the city, in the expectation that capitulation would follow. If these tactics had succeeded, "the whole situation will go very fast," one military source commented, adding, "collapse could come in a matter of hours, not days, if the regular units are broken in battles on the outskirts."

On 19 April, the Senate Foreign Relations Committee relented and approved a \$200 million Vietnam humanitarian aid and evacuation bill after extracting a pledge from the Ford Administration that withdrawal of Americans from South Vietnam would be accelerated. The committee's ranking Republican warned that he would disavow his support of the bill, passed on a 14-3 vote, and oppose it on the Senate floor during the next week if the Administration's evacuation schedule were not observed. The U.S. Embassy in Saigon was reportedly "cutting red tape," reducing the processing time for Vietnamese dependents of Americans seeking authority for emigration from several months to thirty minutes.

On 22 April, it was announced that President Thieu had resigned from his leadership post in the Republic of Vietnam. On 30 April, 1975, the last 1000 Americans were evacuated from Saigon by helicopter. A few hours later, on the same day, the new President of the Republic of Vietnam, Duong Van Minh, announced the unconditional surrender of the Saigon government and its military forces to the Viet Cong. So ended two decades of U.S. involvement in Vietnam.

APPENDIX A

WAR POWERS RESOLUTION

For Legislative History of Act, see p. 2346

PUBLIC LAW 93-148; 87 STAT. 555

[H. J. Res. 542]

Joint Resolution concerning the war powers of Congress and the President.

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

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution".

57. 18 U.S.C.A. § 712.

Nov. 7

WAR POWERS RESOLUTION

P.L. 93-148

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

Sec. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces;

or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request 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.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 20 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a decla-

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ration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

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

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent

resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

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

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

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the head-

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quarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

Passed over Presidential veto Nov. 7, 1973.