

sion 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 headquarters 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 hereof 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.

§ 5. Declarations of War

Article I, section 8, clause 11 of the Constitution authorizes Congress to declare war. Granting Congress this authority and making the President the Commander in Chief of the Army and Navy represents a compromise between the views of delegates to the Constitutional Convention who wanted to grant Congress authority to "make" war and delegates who wanted to grant such authority to the President alone, the Senate

alone, or the President and Senate together.⁽¹⁴⁾

All declarations of war since 1936 have been made by adoption of joint resolutions approved by the President.⁽¹⁵⁾ Either House may originate a joint resolution to declare war. In all cases during this period, the House suspended the rules and promptly agreed to these joint resolutions.

The provision of the House rules which requires that matters reported by committees not be considered in the House until the third calendar day on which the report has been available to Members does not apply to declarations of war.⁽¹⁶⁾

14. Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., p. 325 (1973). Delegates Madison and Gerry, who introduced the amendment substituting "declare war" in place of "make war," which appeared in an early draft of the Constitution, noted that the change would, "leav[e] to the Executive the power to repel sudden attacks." 2 M. Farrand, *The Records of the Constitutional Convention of 1787* (New Haven: rev. ed. 1937) 318; and Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92-82, 92d Cong. 2d Sess., n. 9, p. 326 (1973).

15. See 4 Hinds' Precedents §3368; and 7 Cannon's Precedents §1038 for earlier precedents relating to declarations of war on Spain and Germany, respectively.

16 Rule XI clause 27(d)(4)(A), *House Rules and Manual* §735(d)(4) (1973).

The House Committee on Foreign Affairs has jurisdiction over legislation declaring war.⁽¹⁷⁾

Despite the constitutional provision authorizing Congress to declare war, American forces have been committed to protracted land wars in Korea and Indochina in the absence of such declarations. After North Korea attacked South Korea in June of 1950, the President without consulting Congress ordered air and sea forces to respond. He committed ground troops when the United Nations Security Council requested assistance from United Nations members. Although the President never requested a declaration of war, he proclaimed the existence of a national emergency in December of 1950, six months after the outbreak of hostilities.⁽¹⁾ Congressional acquiescence in the American involvement in the Indochina war was originally found in the Gulf of Tonkin Resolution approved by the House and Senate in August of 1964.⁽²⁾ Following express repeal of this resolution in January of 1971, Congress in most instances⁽³⁾ approved au-

17. Rule XI clause 7(f), *House Rules and Manual* §689 (1973).

1. See §12.1, *infra*, for the text of this proclamation.

2. See §§8.1, 8.2, *infra*, for discussion of this resolution.

3. See the precedents in §10, *infra*, for restrictions on use of forces.

thorizations and appropriations to support troops in the field. The Second Circuit Court of Appeals, applying the test “whether there is any action by the Congress sufficient to authorize or ratify the military activity” in Vietnam in the absence of a declaration of war or express statutory sanction, held that congressional authorization could be implied from approval of legislation to furnish manpower and materials of war.⁽⁴⁾ The court observed that: “. . . neither the language nor the purpose underlying that provision [the declaration clause] prohibits an inference of the fact of authorization from such legislative action as we have in this instance”⁽⁵⁾

4. *Orlando v Laird*, 443 F2d 1039 (1973), cert. denied, 404 U.S. 869. Accord, *Da Costa v Laird*, 448 F2d 1369 (2d Cir. 1971). Contra, *Mottola v Nixon*, 318 F Supp 538 (N.D. Calif. 1970), reversed for lack of standing, 464 F2d 26 (9th Cir. 1972). The Supreme Court summarily affirmed a decision of a three judge district court dismissing a challenge to the constitutionality of the war on political question grounds. *Attlee v Richardson*, 411 U.S. 911 (1973), aff'g., 347 F Supp 689 (D.D.Pa. 1972).

5. *Orlando v Laird*, supra, at p. 1043. Section 8 of the War Powers Resolution (see §4.1, supra, for the text) which states that authority to introduce armed forces cannot be inferred from any provision of law or treaty unless sanction is expressly stated

Congress on several occasions has empowered the President to introduce United States Armed Forces into hostilities by specific statutory authorization short of formal declaration of war.⁽⁶⁾

§ 6. House Action

On Japan

§ 6.1 The House by ye and nay vote suspended the rules and approved a House joint resolution formally declaring a state of war between the United States and the Imperial Government of Japan and then vacated the proceedings and tabled the House joint resolution after agreeing to an identical Senate joint resolution.

On Dec. 8, 1941,⁽⁷⁾ the House by a vote of yeas 388, nays 1, not voting 41, approved a motion made by Mr. John W. McCormack, of Massachusetts, to suspend the rules⁽⁸⁾ and approve House Joint

was drafted as a direct result of *Orlando v Laird*. See S. REPT. No. 220, 93d Cong. 1st Sess., at 25 (1973).

6. See § 8, infra.

7. 87 CONG. REC. 9520, 9536, 9537, 77th Cong. 1st Sess.

8. Earlier that day the Speaker was authorized by unanimous consent to recognize Members for suspension of the rules. *Id.* at p. 9519.