

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-In-Chiefship

ment in hostilities, is limited to instances of (1) a declaration of war, (2) a specific statutory authorization, or (3) a national emergency created by an attack on the United States, its territories or possessions, or its armed forces.<sup>174</sup> In the absence of a declaration of war, a President must within 48 hours report to Congress whenever he introduces troops (1) into hostilities or situations of imminent hostilities, (2) into a foreign nation while equipped for combat, except in certain nonhostile situations, or (3) in numbers which substantially enlarge United States troops equipped for combat already located in a foreign nation.<sup>175</sup> If the President introduces troops in the first of these three situations, then he must terminate the use of troops within 60 days after his report was submitted or was required to be submitted to Congress, unless Congress (1) has declared war, (2) has extended the period, or (3) is unable to meet as a result of an attack on the United States, but the period can be extended another 30 days by the President's certification to Congress of unavoidable military necessity respecting the safety of the troops.<sup>176</sup> Congress may through the passage of a concurrent resolution require the President to remove the troops sooner.<sup>177</sup> The Resolution further states that no legislation, whether enacted prior to or subsequent to passage of the Resolution will be taken to empower the President to use troops abroad unless the legislation specifically does so and that no treaty may so empower the President unless it is supplemented by implementing legislation specifically addressed to the issue.<sup>178</sup>

Aside from its use as a rhetorical device, the War Powers Resolution has been of little worth in reordering presidential-congressional relations in the years since its enactment. All Presidents operating under it have expressly or implicitly considered it to be an unconstitutional infringement on presidential powers, and on each occasion of use abroad of United States troops the President in reporting to Congress has done so "consistent[ly] with" the reporting section but not pursuant to the provision.<sup>179</sup> Upon the invasion of Kuwait by Iraqi troops in 1990, President Bush sought

<sup>174</sup> 87 Stat. 554, 2(c), 50 U.S.C. § 1541(c).

<sup>175</sup> 50 U.S.C. § 1543(a).

<sup>176</sup> 50 U.S.C. § 1544(b).

<sup>177</sup> *Id.* at § 1544(c). It is the general consensus that, following *INS v. Chadha*, 462 U.S. 919 (1983), this provision of the Resolution is unconstitutional.

<sup>178</sup> 50 U.S.C. § 1547(a).

<sup>179</sup> See the text of the reports in *The War Powers Resolution: Relevant Documents, Reports, Correspondence*, *supra* at 47 (Pres. Ford on transport of refugees from Danang), 55 (Pres. Carter on attempted rescue of Iranian hostages), 73 (Pres. Reagan on use of troops in Lebanon), 113 (Pres. Reagan on Grenada), 144 (Pres. Bush on Panama), 147, 149 (Pres. Bush on Persian Gulf), 189 (Pres. Bush on Somalia), 262 (Pres. Clinton on Haiti).