

CRS Report for Congress

Received through the CRS Web

Congressional Use of Funding Cutoffs Since 1970 Involving U.S. Military Forces and Overseas Deployments

Richard F. Grimmett
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Summary

This report provides background information on major instances, since 1970, when Congress has utilized funding cutoffs to compel the withdrawal of United States military forces from overseas military deployments. It also highlights key efforts by Congress to utilize the War Powers Resolution, since its enactment in 1973, to compel the withdrawal of U.S. military forces from foreign deployments. In this review, legislation expressing the “sense of the Congress” regarding U.S. military deployments is not addressed. This report will only be revised if significant new restrictions on use of appropriated funds relating to U.S. force deployments overseas are enacted.

Introduction

In cases of significant differences with the President over foreign policy, especially deployments of U.S. military forces abroad, Congress has generally found that use of its Constitutionally-based “power of the purse” to be the most effective way to compel a President to take actions regarding use of U.S. military force overseas that he otherwise might not agree to. Thus, on various occasions since the Vietnam War era, Congress has used funding cutoffs or significant restrictions on the use of funds as a means of ending or circumscribing the use of U.S. military personnel for foreign operations. As the examples set out below indicate, the use of funding cutoffs and restrictions to curtail or terminate the President’s use of U.S. military force abroad has proven to be much more efficacious in giving effect to Congress’s policy views in this area than has the War Powers Resolution.

Congressional Funding Cutoffs since 1970 Utilized to Compel Withdrawal of U.S. Military Forces from Overseas Deployments

Indochina. During the last years of the Vietnam War, there were a number of efforts in Congress to attach amendments to legislation to restrict military actions by the

United States in the Indochina region, as part of a larger effort to compel the withdrawal of U.S. military forces from the area. Nearly all of these proposals did not pass more than one House of Congress due to vigorous opposition from the President to them. Those that did succeed in passage are as follows:

- ! In late December 1970, Congress cleared H.R. 19911, P.L. 91-652, for the President. This Supplemental Foreign Assistance Appropriations Act prohibited the use of funds to finance the introduction of United States ground combat troops into Cambodia or to provide U.S. advisors to or for Cambodian military forces in Cambodia. As part of the compromise between Congress and the President that led to the enactment of H.R. 19911, similar curbs that had been placed in other legislation in 1970—specifically H.R. 15628, P.L. 91-672 (the Foreign Military Sales Act), and H.R. 19580, P.L. 91-668 (the Department of Defense Appropriations Act), were deleted.
- ! In late June 1973, Congress cleared H.R. 9055, P.L. 93-50, the second Supplemental Appropriations Act for FY1973, for the President's signature. This legislation contained language cutting off funds for combat activities in Indochina after August 15, 1973. Its text read: "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 a related action, Congress completed action on June 30, 1973 on H.J.Res. 636, P.L. 93-52, the Continuing Appropriations Resolution for FY1974. This legislation contained language similar to that in H.R. 9055. The language in H.J.Res. 636 read: "Notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by United States military forces in or over or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia."
- ! In December 1974, Congress completed passage of S. 3394, P.L. 93-559 (the Foreign Assistance Act of 1974), which contained a provision setting a personnel ceiling of 4,000 Americans in Vietnam 6 months after enactment and 3,000 Americans within one year.

More recent examples of congressional funding limitations aimed at preventing or reducing U.S. military deployments overseas relate to Somalia and to Rwanda. These enacted limitations are as follows.

Somalia. Section 8151 of the Department of Defense Appropriations Act for FY1994, P.L. 103-139, signed in November 1993, approved the use of U.S. Armed Forces for certain purposes, including combat forces in a security role to protect United Nations units in Somalia, but cut off funding after March 31, 1994, except for a limited number of military personnel to protect American diplomatic personnel and American citizens, unless

further authorized by Congress. In late September 1994, Section 8135 of the Department of Defense Appropriations Act for FY1995, P.L. 103-335, stated that “None of the funds appropriated by this Act may be used for the continuous presence in Somalia of United States military personnel after September 30, 1994.”

Rwanda. In September 1994, through Title IX of the Department of Defense Appropriations Act for FY1995, P.L. 103-335, Congress stipulated that “no funds provided in this Act are available for United States military participation to continue Operation Support Hope in or around Rwanda after October 7, 1994, except for any action that is necessary to protect the lives of United States citizens.”

Congressional Use of the War Powers Resolution to Compel Withdrawal of U.S. Military Forces Deployed Overseas

Since its enactment in 1973, there is no specific instance when the Congress has successfully utilized the War Powers Resolution to compel the withdrawal of U.S. military forces from foreign deployments against the President’s will. Every President from President Nixon forward has taken the position that the War Powers Resolution is an unconstitutional infringement on the authority of the President, as Commander-in-Chief, to utilize the Armed Forces of the United States to defend what he determines are the vital national security interests of the United States. It should be noted, however, that through a compromise with the Congress in September 1983, President Reagan agreed to the Multinational Force in Lebanon Resolution, P.L. 98-119, that determined that the requirements of section 4(a)(1) of the War Powers Resolution became operative on August 29, 1983, and that Congress authorized the continued participation of the U.S. Marines in the Lebanon Multinational Force for 18 months. President Reagan signed P.L. 98-119 on October 12, 1983. Soon after enactment of P.L. 98-119, 241 U.S. Marines in Lebanon were killed on October 23, 1983 by a suicide truck bombing. On February 7, 1984, President Reagan announced the Marines would be redeployed and on March 30, 1984, reported to Congress that U.S. participation in the Multinational Force in Lebanon had ended.

It is also important to note that beginning in August 1990, following the Iraqi invasion of Kuwait, President Bush over a period of months deployed a substantial number of U.S. military personnel to Saudi Arabia to defend U.S. friends in the region, and, in an effort to induce Iraq to withdraw its military forces from Kuwait. These actions were taken without express authorization by Congress under the War Powers Resolution or any other Act of Congress. Months later in January 1991, Congress passed H.J.Res. 77, the Authorization for Use of Military Force Against Iraq Resolution, P.L. 102-1, which President Bush signed on January 14, 1991. In that legislation Congress declared that H.J.Res. 77 constituted specific statutory authorization for the President to use United States Armed Forces to achieve objectives set out in various cited United Nations Resolutions relating to Iraq’s aggression against Kuwait, if he made a certification to Congress that such use of force was necessary. Congress also noted in this bill that it constituted the authorization contemplated by section 5(b) of the War Powers Resolution.

However, in his signing statement regarding H.J.Res. 77, President Bush noted the following: “As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any

change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution. I am pleased, however, that differences on these issues between the President and many in the Congress have not prevented us from uniting in a common objective." The President, in short, did not characterize a request for "congressional support" for his actions as a request for "congressional authorization" of them. Although, Congress, for its part, characterized its action as a requisite "authorization."

More recently, controversy over U.S. military involvement in Kosovo led to an effort to use the War Powers Resolution as a means to address the question of whether the President could order U.S. combat activity abroad in the absence of Congressional authorization to do so. This debate began in earnest when on March 26, 1999, President Clinton notified the Congress "consistent with the War Powers Resolution", that on March 24, 1999, U.S. military forces, at his direction and in coalition with NATO allies, had commenced air strikes against Yugoslavia in response to the Yugoslav government's campaign of violence and repression against the ethnic Albanian population in Kosovo. The President's action, taken in the absence of Congressional authorization, led to efforts to use the War Powers Resolution as a vehicle to either support or overturn the President's actions. Congress also attempted to use denial of funding for the Kosovo operation. On April 28, 1999, the House of Representatives passed H.R. 1569, by a vote of 249-180. This bill would have prohibited the use of funds appropriated to the Defense Department from being used for the deployment of "ground elements" of the U.S. Armed Forces in the Federal Republic of Yugoslavia unless that deployment was specifically authorized by law. On that same day the House defeated H.Con.Res. 82, by a vote of 139-290. This resolution would have directed the President, pursuant to section 5(c) of the War Powers Resolution, to remove U.S. Armed Forces from their positions in connection with the present operations against the Federal Republic of Yugoslavia. On April 28, 1999, the House also defeated H.J. Res. 44, by a vote of 2-427. This joint resolution would have declared a state of war between the United States and the "Government of the Federal Republic of Yugoslavia." The House on that same day also defeated, on a 213-213 tie vote, S.Con.Res. 21, the Senate resolution passed on March 23, 1999, that supported military air operations and missile strikes against Yugoslavia. On April 30, 1999, Representative Tom Campbell and 17 other members of the House filed suit in Federal District Court for the District of Columbia seeking a ruling requiring the President to obtain authorization from Congress before continuing the air war, or taking other military action against Yugoslavia.

The Senate, on May 4, 1999, by a vote of 78-22, tabled S.J.Res. 20, a joint resolution, sponsored by Senator John McCain, that would authorize the President "to use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia (Serbia and Montenegro)." The House, on May 6, 1999, by a vote of 117-301, defeated an amendment by Representative Ernest Istook to H.R. 1664, the FY1999 defense supplemental appropriations bill, that would have prohibited the expenditure of funds in the bill to implement any plan to use U.S. ground forces to invade Yugoslavia, except in time of war. Congress, meanwhile, on May 20, 1999 cleared for the President's signature, H.R. 1141, an emergency supplemental appropriations bill for FY1999, that provided billions in funding for the existing U.S. Kosovo operation.

On May 25, 1999, the 60th day had passed since the President notified Congress of his actions regarding U.S. participation in military operations in Kosovo. Representative Tom Campbell, and those who joined his suit, noted to the Federal District Court that this was a clear violation of the language of the War Powers Resolution stipulating a withdrawal of U.S. forces from the area of hostilities occur after 60 days in the absence of congressional authorization to continue, or a presidential request to Congress for an extra 30 day period to safely withdraw. The President did not seek such a 30 day extension, noting instead that the War Powers Resolution is constitutionally defective. On June 8, 1999, Federal District Judge Paul L. Friedman dismissed the suit of Representative Campbell and others that sought to have the court rule that President Clinton was in violation of the War Powers Resolution and the Constitution by conducting military activities in Yugoslavia without having received prior authorization from Congress. The judge ruled that Representative Campbell and others lacked legal standing to bring the suit (*Campbell v. Clinton*, 52 F. Supp. 2d 34 (D.D.C. 1999)). Representative Campbell appealed the ruling on June 24, 1999, to the U.S. Court of Appeals for the District of Columbia. The appeals court agreed to hear the case. On February 18, 2000, the appeals court affirmed the opinion of the District Court that Representative Campbell and his co-plaintiffs lacked standing to sue the President. (*Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir. 2000)). On May 18, 2000, Representative Campbell and 30 other Members of Congress appealed this decision to the United States Supreme Court. On October 2, 2000, the United States Supreme Court, without comment, refused to hear the appeal of Representative Campbell thereby letting stand the holding of the U.S. Court of Appeals. (*Campbell v. Clinton*, *cert. denied*, 69 U.S.L.W. 3294 (U.S. Oct. 2, 2000)(No. 99-1843).

Uses by Congress of Funding Restrictions to Affect Presidential Policy Toward Foreign Military/Paramilitary Operations

Although not directly analogous to efforts to seek withdrawal of American military forces from abroad by use of funding cutoffs, Congress has used funding restrictions to limit or prevent foreign activities of a military or paramilitary nature. As such, these actions represent alternative methods to affect elements of presidentially sanctioned foreign military operations. Representative examples of these actions are in legislation relating to Angola and Nicaragua, which are summarized below.

In 1976, controversy over U.S. covert assistance to paramilitary forces in Angola led to legislative bans on such action. These legislative restrictions are summarized below.

- ! The Defense Department Appropriations Act for FY1976, P.L. 94-212, signed February 9, 1976, provided that none of the funds “appropriated in this Act may be used for any activities involving Angola other than intelligence gathering...” This funding limitation would expire at the end of this fiscal year. Consequently, Congress provided for a ban in permanent law, which embraced both authorization and appropriations acts, in the International Security Assistance and Arms Export Control Act of 1976.
- ! Section 404 of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329, signed June 30, 1976, stated that “Notwithstanding any other provision of law, no assistance of any kind

may be provided for the purpose, or which would have the effect, of promoting, augmenting, directly or indirectly, the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola, unless and until Congress expressly authorizes such assistance by law enacted after the date of enactment of this section.” This section also permitted the President to provide the prohibited assistance to Angola if he made a detailed, unclassified report to Congress stating the specific amounts and categories of assistance to be provided and the proposed recipients of the aid. He also had to certify that furnishing such aid was “important to the national security interests of the United States.”

- ! Section 109 of the Foreign Assistance and Related Programs Appropriations Act for FY1976, P.L. 94-330, signed June 30, 1976, provided that “None of the funds appropriated or made available pursuant to this Act shall be obligated to finance directly or indirectly any type of military assistance to Angola.”

In 1984, controversy over U.S. assistance to the opponents of the Nicaraguan government (the anti-Sandinista guerrillas known as the “contras”) led to a prohibition on such assistance in a continuing appropriations bill. This legislative ban is summarized below.

- ! The continuing appropriations resolution for FY1985, P.L. 98-473, 98 Stat. 1935-1937, signed October 12, 1984, provided that: “During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.” This legislation also provided that after February 28, 1985, if the President made a report to Congress specifying certain criteria, including the need to provide further assistance for “military or paramilitary operations” prohibited by this statute, he could expend \$14 million in funds if Congress passed a joint resolution approving such action.