

Reference Sheet on War Powers Reporting

The 1973 War Powers Resolution

Section 4 of the 1973 War Powers Resolution (codified at 50 U.S.C. § 1543), installs two main war powers reporting requirements. First, it requires that the President provide the Speaker of the House and President pro tempore of the Senate with a written report within 48 hours of United States Armed Forces being introduced:

1. “[I]nto hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;”
2. “[I]nto 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. “[I]n numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation[.]”

(Notably, a report of (1) is arguably the condition that This report is required to set forth “the circumstances necessitating the introduction of United States Armed Forces[,]” the “constitutional and legislative authority under which such introduction took place[,]” and “the estimated scope and duration of the hostilities or involvement.”

Second, so long as United States Armed Forces are “introduced into hostilities” or remain in any of the above situations, the President must report to Congress “periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation” at least every six months. In recent practice, the executive branch has consolidated all of these reports into a single periodic war powers report that it releases every six months.

Covert Action

50 U.S.C. § 3093 prohibits the President from “authoriz[ing] the conduct of a covert action”—defined as “activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly,” but not including “traditional” diplomatic, intelligence, law enforcement, or military activities—“unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States[.]” The latter finding must be made in writing in advance unless “immediate action . . . is required[,]” in which case the president shall make a contemporaneous written record of his or her decision and produce a written finding no more than 48 hours after the decision is made. The finding must also identify any U.S. Government entities directed to participate in the covert action as well as any third parties expected to fund or participate the covert activity.

The President is obligated to ensure that these findings are reported to the congressional intelligence committees as soon as possible after such approval and before the initiation of the covert action. If the President does not provide a finding in advance of a covert action—e.g., in situations where “immediate action” is required as noted above—then he or she must “fully inform the congressional intelligence committees in a timely fashion” and provide a “statement of reasons for not giving prior notice.” In any of these scenarios, the President must ultimately provide a copy of the finding to the chairpersons of both congressional intelligence committees.

If the President determines that it is “essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States,” then this information need only be reported to the chairpersons and ranking members of these committees, the Speaker and minority leader of the

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House, and the majority and minority leaders of the Senate, along with other members the President may decide to include. That said, the President must provide a written statement of the reasons for limiting access, notify all the members of the intelligence committee that the finding is being distributed in this limited fashion, and provide them with “a general description regarding the finding or notification[.]” In addition, the President must ensure that, within 180 days, either the relevant finding or notification is provided to all members of the congressional intelligence committees, or the more limited list of officials identified above is provided a statement of reasons as to why “it is essential to continue to limit access to such finding . . . to meet extraordinary circumstances affecting vital interests of the United States[.]”

Sensitive Military Operations

10 U.S.C. § 130f directs the Secretary of Defense to provide the congressional defense committees written notice of any “sensitive military operation”—defined as “a lethal operation or capture operation conducted by the armed forces or . . . a foreign partner in coordination with the armed forces that targets a specific individual or individuals” or “an operation conducted by the armed forces in self-defense or in defense of foreign partners, including during a cooperative operation[.]” but that excludes all operations in Afghanistan, Iraq, and Syria—within 48 hours of it occurring. In addition, the Secretary must inform the defense committees in writing within 48 hours whenever a foreign partner force has been “designated as eligible for the provision of collective self-defense[.]”

Legal and Policy Frameworks

Finally, since 2018, 50 U.S.C. § 1549 has obligated the President to provide the House and Senate committees on appropriations, armed services, foreign affairs, and intelligence with reports on “the legal and policy frameworks for the United States’ use of military force and related national security operations.” As amended by the 2020 National Defense Authorization Act, this provision currently requires the President to provide two types of reports.

First, the President must notify these committees within 30 days whenever there is a change to these legal and policy frameworks. This notice is required to include a description of “the legal, factual, and policy justification for such change” and must be submitted in unclassified form, though it may include a classified annex.

Second, on March 1st of each year beginning in 2020, the President is obligated to provide a report that documents the “legal, factual, and policy justifications for any changes made to such legal and policy frameworks from the preceding year[.]” This is required to include:

- A list of “all foreign forces, irregular forces, groups, or individuals for which a determination has been made that force could legally be used” under the 2001 Authorization for Use of Military Force (AUMF), as well as “the legal and factual basis for such determination” and “whether force has been used” against them; and
- The “criteria and any changes to the criteria for designating” any such entity as “lawfully targetable, a high value target, or as formally or functionally a member of a group covered under the [AUMF].”

This report also must be submitted in unclassified form, but may include a classified annex. The unclassified portion must, “at a minimum, include each change made to the legal and policy frameworks during the preceding year and the legal, factual, and policy justifications for such changes, and shall be made available to the public at the same time it is submitted” to Congress.