

The War Powers Act

Source:

Consultation Requirement

Section 3 of the WPR (50 U.S.C. §1542) requires the President to consult with Congress "in every possible instance" prior to committing U.S. Armed Forces into hostilities abroad. It also provides for "regular" consultation until the conclusion of any such engagement. The statutory language does not define what constitutes meaningful consultation by the President. However, the House Foreign Affairs Committee's report accompanying the WPR discusses the intent of this provision in more detail:

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.**⁶

Even with the additional context provided by the committee report, there remains room for interpretation by both the President and Congress on what precisely meets this statutory requirement. **Failure by the President to properly consult with Congress prior to committing U.S. forces into hostilities does not directly trigger any adverse statutory action. In contrast, the WPR's more clearly defined reporting requirements (discussed below) start the clock on an automatic termination of the use of force and makes available procedures that allow for expedited congressional consideration of legislation that would authorize its continued use.**

Procedures Governing Legislation Authorizing the Use of Military Force (AUMF)

Section 6 of the WPR (50 U.S.C. §1545) establishes expedited procedures for House and Senate consideration of authorization of the use of military force (AUMF). The following sections discuss these procedures as described in statute and as used in practice. However, readers should keep in mind that Congress has never fully used them in the consideration of AUMF legislation. Instead, both the House and the Senate have typically acted faster than the deadlines set by the WPR and have made use of other parliamentary mechanisms to structure consideration of such legislation (e.g., a special rule from the Rules Committee in the House and unanimous consent in the Senate).

Form of Legislation

An AUMF must be introduced in the form of a bill or joint resolution, as with any other measure intended to be enacted into law. The WPR does not prescribe a specific text in order for an AUMF to receive expedited parliamentary consideration. **However, all four AUMFs enacted since the WPR has been in force have been structured similarly to include some or all of the following components: a series of statements explaining and justifying the authorization (whether drafted as a "preamble" preceding the resolving or enacting clause or as a "findings" section of the measure);¹² setting parameters for the use of force, establishing reporting requirements to Congress, and laying out statements of policy.**¹³ It is possible that a bill or joint resolution could be drafted differently and still be considered

eligible for expedited consideration. The House and Senate Parliamentarians are the sources of definitive guidance on whether draft legislation would qualify for expedited consideration under the WPR.

Timing of Introduction

To receive expedited consideration, AUMF legislation must be introduced at least 30 calendar days prior to the expiration of the 60-day termination window discussed in the "[Automatic Termination of Use of Armed Forces](#)" section. This means that Members of Congress have 30 calendar days after the President has reported (or was required to report) to the House and the Senate to introduce an AUMF bill or joint resolution. Under the general legislative power of Congress, AUMF legislation can be introduced at any time, but it will qualify for the expedited procedures of the WPR only if introduced within this 30-day window.