

# Speeches and messages: 1971-1972: War Powers Act

Senator Daniel K. Inouye Papers

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FOR RELEASE ON NOVEMBER 13, 1972

Speech given by Senator Daniel K. Inouye to the Convention  
of the National Order of Women Legislators, Honolulu, Hawaii

## WAR POWERS ACT

Throughout our history--and the history of nations--wars and the threat of war have had a predominant influence on society and on the governments which we have fashioned. Throughout history women have, in many ways, been the chief sufferers of the violence of war. Sharing little of the excitement and stimulation of combat which seems to afflict men on such occasions, they have been left to suffer in their loneliness as their husbands, sweet-hearts and sons have gone off to battle.

Many who spoke most persuasively for extending the franchise to women included the argument that women would have a restraining effect on the war-like nature of men if they were but granted political power. I think it could be argued that that has still to be demonstrated. Perhaps women need far more direct involvement in greater numbers than is true at present. The mere access to the ballot box appears insufficient to restrain men in their follies. Be that as it may, I know of very few hawks among my fellow legislators of the fairer sex.

It may be appropriate, therefore, if I take this opportunity to discuss with you one of my deepest concerns--the war-making powers of our government.

On April 13th of this year, the United States Senate passed a measure known as the War Powers Act. This measure was designed to reassert and to clarify the powers granted by the Constitution to the Congress in that most critical of areas--the question of war or peace. The War Powers Act was passed by a vote of 68 to 16 and I voted with the majority. I supported this measure out of a deep sense of frustration at the inability of the Congress to reassert its proper constitutional role in the most vital of all questions to come before a nation's government.

A radically different measure was passed by the House during the 92nd Congress. The differences were never resolved, however, and the legislation, therefore, died with the Congress.

This has not been the first time the Congress has attempted to legislate in this vital area. We have long sought to express our almost universal distaste for war and our love for peace through the legislative process. In 1937, we passed the Neutrality Act which surely helped bring on the war that was quickly to envelope Europe and Asia. By a single vote, we extended the draft in 1940 even as the war spread throughout the continent of Europe, so great was our desire to remain a continent at peace. We in the Congress have no claim to foresight in the conduct of our foreign affairs but we are faced with a constitutional responsibility which has been increasingly eroded and usurped.

Not since World War II has the Congress exercised its full constitutional powers in this realm. The Korean War and more recently the war in Southeast Asia have been conducted under terms and within limits prescribed by the President as Commander-in-Chief despite our belated efforts to reassert some control.

Our latest effort was the passage by the Senate of the War Powers Act. This measure set forth as its purpose the fulfillment of the intent of our founding fathers that the collective judgment of both the Congress and the President will apply to the introduction and continued use of the armed forces of the United States into hostilities abroad.

That this measure received such overwhelming support is without question due to the deep sense of outrage and frustration which has evolved from the numerous unsuccessful attempts to bring the war in Vietnam under greater legislative control. It is motivated by the desire of the Congress to assure that there will be no more Vietnams.

Yes, the war in Vietnam has many legacies. Described by some as the greatest tragedy to strike this nation since the Civil War, it is altogether fitting and proper that we seek to learn from that tragedy and that we seek to build into our governmental processes safeguards against any such recurrence.

It is not necessary that we absolve the Congress of responsibility for Vietnam to now dedicate our efforts to trimming the executive role in this area. I too voted for the Gulf of Tonkin Resolution as

did all but two of my colleagues. I too gave my support to the President in his escalation of the American involvement. I too have the blood of Vietnam on my hands.

I do not believe, however, that the presently perceived distribution of powers and level of congressional responsibility for decision making relative to involving this nation in armed conflict encourages acceptance of our full constitutional responsibility.

It is all too convenient under prevailing traditions to escape our full share of responsibility with a pledge of support for our Commander-in-Chief and an expression of confidence in his superior knowledge of the threat before us. It is all too easy to avoid making our own moral judgments when we are not asked to vote a formal declaration of war but asked only to approve steps which appear to fall far short of that action although the end result may be no less disastrous.

The framers of our Constitution had learned from experience the danger of entrusting to a single man the control over the military establishment which could commit a nation to war. This is a danger which we have had to relearn to our sorrow.

Article I, section 8 of the Constitution enumerates the war powers of the Congress. That list is detailed and comprehensive.

The Congress is:

- To provide for the common defense.
- To define and punish... offenses against the law of nations.
- To declare war.
- To raise and support armies.
- To make rules for the government and regulation of the land and naval forces.
- To provide for calling forth the militia to execute the laws... and repel invasions.
- To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.

In addition, there is the "necessary and proper" clause which empowers the Congress:

To make all laws which are necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the government of the United States, or in any department or offices thereof.

By contrast the war-making powers of the President are limited to the following in Article II, section 1 which states:

The executive power shall be vested in a President of the United States of America.

And Article II, section 2 which reads:

The President shall be the Commander-in-Chief of the army and navy of the United States, and of the military of the several states, when called into the actual service of the United States.

It should be apparent to anyone who reads the constitutional language in the light of current practice that the situation today is far afield from that enunciated in the Constitution. From the sparse language of the Constitution has evolved a doctrine of almost limitless powers by the executive as Commander-in-Chief to exercise even powers specifically enumerated and granted to the Congress.

To the credit of the United States Senate we in the 92nd Congress did make an effort to reassert and clarify our historic role.

The Administration strongly opposed any legislative expression or reassertion of our constitutional role.

I would not maintain that the instrument selected was a perfect one. The War Powers Act attempted to resolve the conflict which some see between constitutional due process and the need for urgent action. It did so by extending to the President the authority

to commit American troops abroad for a period not to exceed 30 days without prior congressional approval.

I am concerned that in authorizing the President to take military action for a period of up to 30 days without express congressional authority we would be legitimizing a degree of independent authority in the very act of circumscription. The Commander-in-Chief was not, in my mind, given such power under the Constitution as framed nor was such authority intended from my reading of the thoughts of those who drafted our Constitution.

The shortcomings of the War Powers Act as passed by the Senate are not the greatest of our difficulties, however. Even if we could achieve agreement with the House of Representatives, it is clear that any congressional effort to limit the authority of the executive in this area and to reassert the clear constitutional authority of the Congress will flounder on a presidential veto. Moreover, it is doubtful that such jealous guardianship of self-claimed executive prerogatives is going to be limited to the current occupant of the executive mansion. Power, once assumed, is seldom willingly relinquished.

It seems clear that the resolution of the current conflict over the war-making powers between the legislative and the executive cannot be achieved by the joint action of the parties to the dispute--the Congress and the President.

Even the Supreme Court of the United States has refused to consider the problem.

A solution must, therefore, be found elsewhere. The only avenue open is through a constitutional convention called for that express purpose.

As you know, there are two approaches to amending the Constitution. One provides for the Congress to enact the appropriate amendment by a two-thirds vote of each House, this amendment to then be ratified by three-fourths of the States. This is the procedure which has been used to date.

The other provides that on petition by the legislatures of two-thirds of the states a constitutional convention shall be called by the Congress. The Congress cannot on its own initiative call such a constitutional convention. It can be called only upon the application of the necessary state legislatures.

It is my view that clarification of the war-making powers and responsibility is so important and so basic to the future of our democratic government that it cannot be permitted to remain in its present state of indecision. Neither can it be resolved by the parties to the dispute--the President and the Congress--directly. A constitutional convention called for that purpose is, therefore, essential.

It is for this reason that I have communicated with each of our state legislators here in Hawaii urging that they act to petition the Congress for a constitutional convention for this purpose.

I hope other states will also take up the task. It is a problem of the utmost importance to our nation and to our national survival.

If we put to good use the lessons of Vietnam, we may still gain something of redeeming value from that great tragedy. That is a matter which is also up to you. We need your help.



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