

DECLARING A STATE OF WAR BETWEEN THE UNITED STATES AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

APRIL 27, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GILMAN, from the Committee on International Relations, submitted the following

ADVERSE REPORT

[To accompany H.J. Res. 44]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the joint resolution (H.J. Res. 44) declaring a state of war between the United States and the Government of the Federal Republic of Yugoslavia, having considered the same, report unfavorably thereon and recommend that the joint resolution do not pass.

BACKGROUND AND PURPOSE

Representatives of the Federal Republic of Yugoslavia (FRY) and the ethnic Albanians from the Serb Province of Kosovo convened for negotiations in Rambouillet France on February 7, 1999. After sixteen days of talks the negotiations recessed at the request of the Albanians who wanted to return to Kosovo to consult with members of the Kosovo Liberation Army (KLA) and others among the Albanian community. Three weeks later the negotiations reconvened and the Albanian representatives signed the Rambouillet Accords which provided for substantial autonomy for the ethnic Albanians of Kosovo, a sharp reduction of Serbian police and military personnel in the province, and a NATO-led peacekeeping force comprised of 28,000 troops, of which the United States had agreed to provide 4,000.

On March 11, 1999 the House adopted H. Con. Res. 42, a concurrent resolution stating, in part, that “the President is authorized to deploy United States Armed Forces personnel to Kosovo as part

of a NATO peacekeeping operation implementing a Kosovo peace agreement.”

Representatives from NATO had made clear to the government of the FRY that if the Albanians agree to the Rambouillet Accords, and the FRY did not, NATO would undertake punitive air strikes against targets throughout the FRY. The FRY, objecting to the provisions for the NATO-led peacekeeping force, refused to sign the Accords, and the talks ended. On March 24, 1999 NATO launched the air strikes. On March 26, 1999, President Clinton reported to the Congress, “consistent with the War Powers Resolution”, that the United States had begun “a series of air strikes in the [FRY] in response to the FRY government’s continued campaign of violence and repression against the ethnic Albanian population in Kosovo.”

Serbian special police and military forces have, despite the NATO air strikes, been able to conduct an offensive operation in Kosovo involving in excess of 40,000 troops. Serbian forces have driven more than 850,000 of the 1.6 million Albanians out of Kosovo, and there are reports that there may be at least 500,000 more internally displaced within Kosovo. Albanian refugees have reported that they have witnessed mass killings, rapes and other atrocities. It is believed that there are 100,000 men of war-fighting age being held in Kosovo by the Serbs for forced labor or as potential human shields or hostages.

Rep. Tom Campbell introduced H.J. Res. 44 on April 12, 1999. The resolution declares a state of war between the United States and the Federal Republic of Yugoslavia, pursuant to section 5(b) of the War Powers Resolution (50 U.S.C. 1544 (b)), and article 1, section 8 of the Constitution.

Section 5(b) of the War Powers Resolution provides in pertinent part that:

Within sixty calendar days after a report is submitted or is required to be submitted [informing Congress that U.S. Armed Forces have been introduced into hostilities or a situation where imminent involvement in hostilities is clearly indicated by the circumstances] the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States.

Section 6 of the War Powers Resolution provides expedited procedures to govern the consideration of joint resolutions and bills introduced pursuant to section 5(b).

Under section 6, the Committee is required to report H.J. Res. 44 by May 1, 1999. The joint resolution “shall become the pending business of the House in question * * * and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by the yeas and nays.”

The Committee recognizes that the United States has used force in many instances without a formal declaration of war since the

last declaration of war in 1942 (against Romania). The use of force by the United States in the absence of a declaration of war is permissible under international law.

So far as the Committee is aware, there is no precedent in United States history for the declaration of war by Congress in the absence of a request for such action by the President. In this instance, the President has not requested a declaration of war. Indeed, the Administration in a letter to the Committee dated April 22, 1999, stated its opposition to declaring war against the Federal Republic of Yugoslavia.

In the view of the Committee, declaring a state of war in this instance would complicate the objective of U.S. policy to work within the North Atlantic Alliance, whose other members have not supported declaring war, and would also present difficulties to states in the region of the FRY.

The Committee believes that, if adopted, H.J. Res. 44 would have adverse repercussions within the North Atlantic Alliance. It would place the United States alone in a declared state of war with the FRY. It would compound strains in U.S. relations with Russia, and could strengthen Mr. Milosevic politically within the FRY. A declaration of war would also blur the message that we and our allies have been trying to convey to the Serbian people regarding the limited objectives of Operation Allied Force.

COMMITTEE ACTION

INTRODUCTION AND CONSIDERATION OF THE JOINT RESOLUTION

The Committee on International Relations held a hearing on February 10, 1999 concerning U.S. policy in Kosovo and received testimony from Undersecretary of State for Political Affairs Thomas Pickering, and from Undersecretary of Defense for Policy Walter Slocombe. On March 10, 1999 the Committee received testimony from a number of private witnesses regarding Kosovo, including former Secretary of State Henry Kissinger, former Permanent Representative of the United States to the United Nations Jeanne Kirkpatrick, and former Senator Bob Dole. On April 21, 1999, Secretary of State Madeleine Albright testified on the situation in Kosovo before the Committee. In addition to these public hearings, Administration and U.S. military officials have briefed members in closed sessions, and there have been consultations conducted by the President with key members of the Congress.

The Committee marked up H.J. Res. 44 and, a quorum being present, ordered it reported adversely, by record vote, on Wednesday, April 24, 1999.

RECORD VOTES ON AMENDMENTS AND MOTION TO REPORT

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the committee report. The following vote was taken during the consideration of H.J. Res. 44:

Description of Amendment, Motion, Order, or Other Proposition
(Vote during markup of H.J. Res. 44—April 27, 1999)

(4:52 p.m.).—Bereuter motion to order the resolution reported adversely.

Voting Yes: Gilman, Goodling, Leach, Hyde, Bereuter, Smith, Burton, Gallegly, Ros-Lehtinen, Ballenger, Rohrabacher, Manzullo, Royce, King, Chabot, Sanford, Salmon, Houghton, Campbell, McHugh, Brady, Burr, Gillmor, Radanovich, Cooksey, Tancredo, Gejdenson, Lantos, Berman, Ackerman, Faleomavaega, Martinez, Payne, Menendez, Brown, McKinney, Hastings, Danner, Hilliard, Sherman, Wexler, Rothman, Davis, Pomeroy, Delahunt, Meeks, Lee, Crowley, and Hoeffel.

Ayes 49. Noes 0.

OTHER MATTERS

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform Committee pursuant to clause 4(c)(2) of rule X of those Rules. The Committee on International Relations has received no such findings or recommendations from the Committee on Government Reform.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.J. Res. 44 as reported by the Committee: Article I, section 8, clause 11 (relating to declaring war) and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.J. Res. 44 is not intended to preempt any state or local law.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES, CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, AND FEDERAL MANDATES STATEMENTS

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended, and, when practicable with respect to estimates of new budget authority, a comparison of the estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

Clause 3(d) of rule XIII of the Rules of the House of Representatives requires committees to include their own cost estimates in certain committee reports, which include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

Clause 3(c)(3) of rule XIII of the Rules of the House of Representatives requires the report of any committee on a measure which has been approved by the Committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted.

Section 423 of the Congressional Budget Act requires the report of any committee on a bill or joint resolution that includes any Federal mandate to include specific information about such mandates. The Committee states that H.J. Res. 44 does not include any Federal mandate.

The Committee adopts the cost estimate of the Congressional Budget Office as its own submission of any new required information with respect to H.J. Res. 44 on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt. It also adopts the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. The estimate and report which has been received is set out below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 27, 1999.

Hon. BENJAMIN A. GILMAN,
*Chairman, Committee on International Relations,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: At your request, the Congressional Budget Office (CBO) has prepared the enclosed cost estimate for H.J. Res.

44, a joint resolution declaring a state of war between the United States and the government of the Federal Republic of Yugoslavia.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeannette Deshong.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.J. Res. 44—Declaring a state of war between the United States and the government of the Federal Republic of Yugoslavia

The resolution would declare a state of war between the United States and the government of Yugoslavia.

Uncertainty about the duration, intensity, and conduct of a war makes it impossible to estimate the costs of implementing the resolution. The Department of Defense has requested about \$5.5 billion in supplemental appropriations for 1999 to cover the U.S. share of actual and projected costs of the North Atlantic Treaty Organization's operations in Yugoslavia. Also, CBO estimates that if fighting escalated to include U.S. ground forces, costs would be about \$300 million a month to deploy and sustain each increment of 27,000 troops and over \$1 billion a month to sustain an air campaign. For comparison purposes, the costs of the Gulf War totaled about \$61 billion. Thus, costs in any year would probably be in the tens of billions of dollars. Because the resolution would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the national security. CBO has determined that H.J. Res. 44 fits within that exclusion.

The estimate was prepared by Jeannette Deshong. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

The Joint Resolution states "That pursuant to section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)), and article 1, section 8 of the United States Constitution, a state of war is declared to exist between the United States and the Government of the Federal Republic of Yugoslavia."