

U.S. Senate Committee on Foreign Relations
Chairman John F. Kerry
Opening Statement for War Powers of the 21st Century Hearing
April 28, 2009

Chairman Kerry Opening Statement At War Powers Hearing

WASHINGTON, D.C. – Senate Foreign Relations Committee Chairman John Kerry (D-MA) made the following opening remarks today at the hearing titled “War Powers in the 21st Century”.

Full text as prepared is below:

Today we have the privilege of hosting three of the preeminent statesmen of our time to discuss one of the most vital questions that comes before our democracy: how America goes to war.

Secretaries Baker and Christopher, and Chairman Hamilton, we thank you for joining us today and for your efforts to find a practical solution to this complex problem. Your decades of experience in government, and your firsthand knowledge of this issue, make your testimony before this Committee today especially valuable. We look forward to hearing your views.

There fundamental tension in the way America decides to go to war: the President is Commander in Chief of the armed forces while Congress has the power to declare war. How these constitutional powers interact is the subject of much debate.

Uncertainty over Congress’ role in two successive wars—Korea and Vietnam—led to the passage of the War Powers Resolution in 1973. The Resolution, which today’s witnesses recommend repealing, has been controversial since it was enacted over President Nixon’s veto.

The 1973 Resolution represents Congress’s effort to clarify and make concrete its role in the decision to go to war. It requires that the President consult with Congress prior to -- and on a regular basis after -- U.S. forces are deployed. More controversially, the law requires that the President withdraw our forces within 60 days of their deployment into combat, absent specific congressional authorization or an extension of the deadline by Congress.

This approach has raised important questions. Some believe that imposition of a deadline for withdrawal inappropriately constrains the Executive and projects uncertainty to enemies. Others more sympathetic to legislative power have argued that allowing the President to go to war for 60 days or longer without authorization is an indefensible abdication of Congress’ prerogative under the Constitution to declare war.

What is clear to all is that the 1973 War Powers Resolution has not functioned as intended. Presidents since Nixon have questioned the statute’s constitutionality. None have complied by filing a report that would trigger a 60-day deadline for congressional authorization.

Over the years, there have been various efforts within Congress, including by this Committee, to amend the War Powers Resolution. Nonetheless, the fundamental issue remains unresolved.

The National War Powers Commission consciously avoided trying to resolve the constitutional debate or define the contours of each branch’s powers. I appreciate their pragmatic approach.

The Commission’s proposal is the War Powers Consultation Act of 2009. It would repeal the 1973 War Powers Resolution, and provide a new framework for interaction between Congress and the President. The proposed statute would require that the President consult with a newly-formed joint congressional committee prior to ordering the deployment of U.S. armed forces into “significant armed conflict” or, under certain circumstances,

within three days of deployment. The statute would also create a mechanism to ensure that both houses of Congress vote on the particular military action within thirty days of the deployment.

In their work on this issue, our witnesses today have struggled to grapple with the exigencies of a global struggle terrorism and the changing nature of America's military involvements—which today look very different than they did in 1973. As one would expect of an effort from a group of statesmen who have tackled some of the world's most intractable conflicts, this is a thoughtful and formidable effort, and it is very much worthy of further consideration.

I am sure our witnesses will go into more detail on the specifics of their proposal and look forward to that. Before turning the floor over to Senator Lugar, I would like to once again thank Secretary Baker, Secretary Christopher, and Chairman Hamilton for being here today, and for their insights into this important issue.

###