

Opening Remarks of James A. Baker, III

Senate Foreign Relations Committee

10 a.m. Tuesday, April 28, 2009

Washington DC

Chairman Kerry, Ranking Member Lugar, members of the Committee, it is an honor to be with you today.

We are here to discuss the report of the National War Powers Commission, which Chris and I co-chaired and on which your former congressional colleague, Lee Hamilton, served as a very valuable member.

Let me start with background on the commission and the problem it dealt with. Secretary Christopher will then outline our proposed new law.

Two years ago, Chris and I were approached by the Miller Center at the University of Virginia to co-chair an independent bi-partisan commission to consider an issue that has bedeviled legal experts and government officials since the Constitution was framed—the question of how our nation makes the decision to go to war.

Our Constitution gives the President the powers of commander-in-chief. The Congress has, of course, the power of the purse and the power to declare war.

But history indicates that Presidents and Congresses have often disagreed about their respective roles in the decision to go to war. And the Supreme Court has shied away from settling the constitutional issue.

It was evident that we needed a practical solution to this conundrum.

As we put together the Commission, it was important that we have a wide range of perspectives and voices. And so our Commission includes legal experts, former Congressional members, former White House staffers and former military leaders. The 12-member Commission is equal parts Democrats and Republicans.

After 14 months of study, we concluded that the central law governing this critical decision, the War Powers Resolution of 1973, is ineffective, and should be repealed and replaced with better law.

The 1973 Resolution's greatest fault is that most legal experts consider it unconstitutional, although the Supreme Court has never ruled on it. We believe that the rule of law, a centerpiece of American democracy, is undermined and damaged when the main statute in this vital policy area is regularly questioned or ignored.

The Resolution has other problems. It calls for the President to file reports of armed conflicts and then uses these filings to trigger an obligation for the President to remove troops within 60 or 90 days if Congress has not affirmatively approved the military action. This purports to allow Congress to halt military campaigns by inaction.

Unsurprisingly, no President—Democrat or Republican—has filed reports in a way that would trigger the obligation to withdraw. As a result, the 1973 statute has been honored more in the breach than by observance.

Recognizing this, others have suggested amending or replacing the flawed law. But no such proposal has gotten very far, typically because most of them have sided too heavily with either the President or Congress.

A common theme, however, runs through all of these efforts: The importance of meaningful consultation between the President and Congress before the nation is committed to war.

Our proposed statute would do exactly that—promote meaningful discussion between the President and Congress when America’s sons and daughters are to be sent into harm’s way.

But it expressly does so in a way that does not limit or prejudice either the Executive or Legislative branches’ rights or ability to assert their respective constitutional war powers. Neither branch is prejudiced by what we are proposing.

And in fact, we think both branches and the American people will benefit from it.

Before I turn the microphone over the Secretary Christopher, let me first say how rewarding it has been to work with this fine gentleman, able statesman, and dedicated public servant.