

Opening Remarks of Warren Christopher
Senate Committee on Foreign Relations
10 a.m. Tuesday, April 28, 2009
Washington DC

Mr. Chairman, Ranking Member, and members of the Committee:

My testimony will follow up briefly on Secretary Baker's statement.

Without going on about it, let me just say that it is a lot more fun working with Secretary Baker than working against him. He is an extraordinary American leader.

The statute we propose is straight forward. It establishes a bipartisan Joint Congressional Consultation Committee consisting of the Leaders of the House and the Senate, and the Chairs of the key committees. Under the proposed statute, the committee is provided with a permanent professional staff and access to relevant intelligence information.

The statute requires the President to consult with the Congressional Consultation Committee before deploying US troops into any significant armed conflict, which is defined as combat operations lasting or expected to last more than a week. If the need for secrecy precludes prior consultation, the President is required to consult with the committee within three days after the conflict begins. For purposes of the statute, consulting means providing an opportunity for a timely exchange of views, and not mere notification.

Within 30 days after the armed conflict begins, Congress is required to vote up or down on a resolution of approval. If the resolution of approval is defeated, any Senator or representative may file a resolution of disapproval. A resolution of disapproval will have the force of law only if it is passed by both Houses and signed by the President, or if the President's veto is overridden. However, if the resolution of disapproval has not survived the President's veto, Congress can express its opposition through its internal rules.

Mr. Chairman, I recognize that many advocates of Congressional power argue that Article 1, Section 8 of the Constitution puts the decision to go to war exclusively or primarily in the hands of Congress by giving Congress the power to declare war. They say that by this provision, the framers of the Constitution stripped the Executive Branch of the power to commence war that the English King enjoyed.

On the other hand, proponents of Presidential authority point to the Executive Power and Commander-in-Chief clauses in the Constitution. They say that the framers wanted to put the authority to make war in the hands of the government official who had the most information and the ability to execute; and they point to recent history as proof of the President's predominance.

A whole forest of trees has been felled to publish writings on this debate. Although both sides make compelling arguments, only three propositions hold true:

(1) No consensus has emerged from the debate in 200 years; no one has “won” the argument.

(2) Only a constitutional amendment or decisive Supreme Court opinion will resolve the debate; neither is likely forthcoming anytime soon, and courts have turned down war powers cases filed by as many as 100 members of Congress.

(3) Despite what I or my fellow commission members may feel about the debate, we cannot resolve it, and the last thing we wanted to do was offer yet another opinion on who was right or wrong.

Thus, in drafting the statute before you, our Commission deliberately decided not to try to resolve the debate. Indeed, our proposed statute says “neither branch by supporting or complying with this act shall in any way limit or prejudice its right or ability to assert its Constitutional war powers, or its right or ability to question or challenge the constitutional war powers of the other branch.”

Instead of trying to call balls or strikes, we unanimously agreed that any legislative reform must focus on practical steps to insure that the President and Congress consult in a meaningful way on the decision to go to war. We believe that, among all available, practical alternatives, the proposed statute best accomplishes that result, is a significant improvement over the 1973 Resolution, and is good for the Congress, the President, and the American people.

From the standpoint of Congress, the statute gives a more significant seat at the table when our nation is deciding whether or not to go to war. It provides not only a seat at the table, but a permanent staff and access to all relevant intelligence information. It calls for genuine consultation, not mere lip service. The seasoned views of Congressional leaders constitute a vital resource for the President in his decision making process. It is very healthy for the President to hear the independent opinions of people who don’t work for him.

For the President, the proposal eliminates a law that every President since 1973 has regarded as unconstitutional. It provides a mechanism for his consultation with the Congress, and it identifies the leadership group with whom he should consult.

From the standpoint of the American people, this statute will enhance the prospect of cooperation between the Congress and the President on matters of war. This is something that public opinion polls have consistently indicated Americans have wanted for the past 70 years.

The American people deserve something better than a law that is ineffective and has been largely ignored for 70 years. The new statute achieves that result.

Mr. Chairman, we have sought to set a careful balance between the Congress and the President on this matter of grave importance. Neither the strongest advocates of Congressional power nor those of Presidential power are likely to be completely happy with our proposal, but we think that this is a reflection of the balance that we have sought to strike.