

Senate Committee on Foreign Relations
Senator Richard G. Lugar
Opening Statement for Hearing on War Powers
April 28, 2009

The Committee meets today to discuss important questions about the respective roles of the President and the Congress in decisions to use force. We are fortunate to have with us former Secretaries of State James Baker and Warren Christopher and Congressman Lee Hamilton. Each of them has unique insights into these issues, both from their experiences in government and from their study as members of the National War Powers Commission. We welcome each of you to the Committee and look forward to your testimony.

Sending members of the U.S. military into harm's way is perhaps the most significant decision our government can make. We know from long experience that a military mission is more likely to be successful if it is broadly supported by the American people. Joint action by the President and the Congress in authorizing the use of force can play an important role in building and expressing such support. In addition, both allies and enemies will be more convinced of the determination of the United States to achieve the objectives for which force is used if those objectives are understood to be broadly supported by both branches.

Under our Constitution, decisions about the use of force involve the shared responsibilities of the President and the Congress, and our system works best when the two branches work cooperatively in reaching such decisions. While this is an ideal toward which the President and Congress may strive, it has sometimes proved hard to achieve in practice. Today's hearing gives us an opportunity to consider the framework in which decisions about the use of force are made, and whether there are ways in which it might be improved.

Questions of how best to harmonize the roles of the President and the Congress on use of force questions have proved vexing since the founding of the Republic. The framers of the U.S. Constitution designated the President as Commander-in-Chief of the Armed Forces, but entrusted to the Congress the authority to declare war. In the period following the Vietnam War, the Congress passed the 1973 War Powers Resolution in an effort to regularize Executive-Congressional cooperation on use of force decisions, and in particular to ensure an appropriate role for the Congress in such matters. It provides requirements for Presidential consultation with, and reporting to, the Congress on issues related to the use of force, and a requirement that the President terminate uses of armed force not specifically authorized by the Congress within timeframes specified by the resolution.

The War Powers Resolution has not proven to be a panacea. Presidents have not always consulted formally with the Congress before reaching decisions to introduce U.S. forces into hostilities, and they have objected to the assertion that inaction by Congress can compel the termination of a military action initiated by the President. The Congress has not always taken up legislation authorizing – or expressing disapproval of – Presidential uses of force. Both Presidents and Members of Congress have voiced dissatisfaction with the resolution's operation in practice.

Interaction between the President and Congress related to the War Powers Resolution has also been affected by inherent ambiguities. In today's world, many potential military actions are very small scale, have a very limited purpose, or target terrorists or other non-state combatants. The recent rescue operation mounted against Somali pirates combined all three of these conditions. Does every movement of the military ordered by the Commander-in-Chief that might lead to some use of force require Congressional consultation?

Ambiguity also exists about what constitutes adequate notification and consultation. On April 14, 1986, for example, I was called to the White House at 4:00 p.m. along with other Senate and House leaders. We were informed that two hours earlier, U.S. warplanes had taken off from airbases in the United Kingdom headed for targets in Libya. They were due to strike that country at 7:00 p.m. During the ensuing two and a half hour meeting, we received a full briefing and engaged in a detailed conversation with President Reagan and national security officials on the bombing operation and its implications. In my judgment, this meeting constituted acceptable consultation, given the need for secrecy and the possibility that the planes could have been turned around had the President encountered strong opposition from the group assembled. But some commentators believed the meeting fell short of the requirements for full Congressional consultation.

The report of the National War Powers Commission proposes a new statute to replace the War Powers Resolution. Under the proposed statute, the President would be required to consult with a newly-created Joint Congressional Consultation Committee in most cases before ordering the deployment of United States armed forces into significant armed conflict. The statute would also require both chambers of Congress to hold a timely up-or-down vote regarding any significant armed conflict in which the President introduces U.S. forces. The proposed statute further provides for the President to consult with, and report to, the Congress regularly during the course of significant armed conflicts in which U.S. forces are engaged.

We look forward to the testimony of our witnesses about the issues with which the Commission grappled in formulating its proposal and the ways in which they believe their proposed approach would improve collaboration between the President and Congress on decisions relating to the use of force.

I thank the Chairman and look forward to our discussion.

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