

list of finite amendments to the Defense Authorization Act last week, the leadership filed a cloture motion on the bill. The Senate will vote on cloture on the bill at 10 a.m. tomorrow. I certainly hope the Senate will invoke cloture on the bill because we have so many important items in this bill relating to our national security. It is essential that we act in the Senate so we can go to conference with the House and bring back a conference product.

So far we have adopted 47 amendments to the bill. We have had two rollcall votes. And one amendment has been offered and then withdrawn. Over the last few days of last week, and over the weekend, we and our staffs have worked through more of the amendments that have been filed on the bill.

Senator WARNER and I have another package of cleared amendments that we will be offering later today in the form of a managers' package. We are continuing to work to clear amendments, and we expect to have more cleared later this afternoon. I encourage Senators who have amendments to bring them down and to work with our staffs to try to get them cleared.

Completing action on this bill tomorrow would send a powerful signal to our allies and our adversaries around the world of our sense of national unity and determination and of our strong support for our Armed Forces. Failure to complete action on this bill would send the opposite message. So I urge all of our colleagues to put aside controversial issues that do not relate to this bill and to work with Senator WARNER and with me to complete action on this important legislation.

The ranking minority member of the committee, Senator WARNER, is at the White House with the President this afternoon. We were scheduled to begin at 2 o'clock, but that meeting with the President obviously takes precedence.

RECESS

Mr. LEVIN. So, Mr. President, I ask unanimous consent that the Senate stand in recess until 3:15. At that time, we will be in this Chamber to discuss amendments that Senators might wish to offer. And the managers will stay as late today as is necessary to discuss any of those amendments.

I thank the Chair.

There being no objection, the Senate, at 2:07 p.m., recessed until 3:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. DORGAN).

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

USE OF FORCE AUTHORITY BY THE PRESIDENT

Mr. BYRD. Mr. President, up until a few days ago, the Senate was moving with lightning-like speed to complete consideration of the Defense authorization bill. Complications arose last week and slowed the bill down, but it appears that the Senate may be poised to shift back into high gear—or something like it—tomorrow and attempt to finish the bill. A cloture motion was filed last week. If cloture is invoked on Tuesday, passage of the bill will be more nearly assured.

Clearly, the Senate has many weighty matters to consider, both in this bill and in other measures waiting in the wings. We should proceed with all due haste to complete our work. The September 11 terrorist attack on the United States reordered our priorities and imposed a new measure of urgency on much of the business that is yet to come before the Senate.

But in the heat of the moment, in the crush of recent events, I fear we may be losing sight of the larger obligations of the Senate. Our responsibility as Senators is to carefully consider and fully debate major policy matters, to air all sides of a given issue, and to act after full deliberation. Yes, we want to respond quickly to urgent needs, but a speedy response should not be used as an excuse to trample full and free debate.

I am concerned that the Defense bill may be a victim of this rush to action, despite the respite offered by last week's delays. For example, the Defense bill, as reported by the Senate Armed Services Committee, contained language conditioning the expenditure of missile defense funds on U.S. compliance with the Antiballistic Missile Treaty, the ABM Treaty. I worry that that language—which was somewhat controversial in committee and which was only narrowly approved—was dropped without a word of debate being uttered on the Senate floor. I understand the reluctance to engage in divisive public debate at a time when we are all seeking unity, but I caution that debate over such an important subject as the ABM Treaty is not to be lightly dismissed. There is no question about the unity. The unity is here. And certainly, insofar as I am concerned, debate over an issue of this kind is not going to be an apple of discord thrown into the mix. We may just happen to disagree on some matters with respect to the ABM Treaty.

So I cannot understand why there needs to be such "unity" that it would require keeping our voices completely mute on a matter of this kind. It would be no indication of disunity in this country and our need to be unified in dealing with the terrorists or nations that harbor terrorists. As a matter of fact, the mere fact that we would disagree on a matter before the Senate—the ABM Treaty, for example—is no indication of disunity when it comes to facing the common foe. Not to me, at least.

The Defense authorization bill provides up to \$8.3 billion for missile defense, including activities that may or may not violate the ABM Treaty in the coming months. Many experts believe the ABM Treaty is the cornerstone of international arms control and that to abrogate or withdraw from the treaty can only lead to a new, dangerous, and costly international arms race. Other experts, on the other hand, are of the opinion that the ABM Treaty has outlived its usefulness, that it is a relic of the cold war that makes it impossible for the United States to protect its citizens against a new world order of rogue nations armed with ballistic missiles and transnational terrorists who may very well be armed with chemical, biological, and nuclear weapons.

This is a major policy issue. That is what it is—a major policy issue. I am not sure where I stand on the ABM Treaty, but I do know I am not prepared to trade it in on a still-to-be-developed, still-to-be-proven national missile defense program without giving the matter a great deal of thought and consideration.

The language that was dropped from the Defense bill would have provided Congress the opportunity to vote on funding any missile defense expenditure that would violate the ABM Treaty. It was a sensible provision, as I see it. I would have supported it, probably, and I would have been eager to engage in debate over it. Although I might have little to say, I would still like to hear it. I would like to hear others. That opportunity was given away to avoid what? To avoid a debate that some might have called divisive on this bill. So be it. But having postponed that debate on this bill, we have an obligation to find another venue in which to have that debate. And we should have that debate sooner rather than later.

The resolution granting the President the authority to use force to respond to the September 11 terrorist attack is another example of Congress moving quickly to avoid the specter of acrimonious debate at a time of national crisis. The resolution Congress approved gives the President broad authority to go after the perpetrators of the terrorist attack regardless of who they are or where they are hiding. I am not saying we ought to debate that ad infinitum, but at least we could have had 3 hours or 6 hours of debate. Why do we have to put a zipper on our lips and have no debate at all?

It also authorizes the President to take all appropriate actions against nations, organizations, or persons who aided or harbored those perpetrators. In his address to Congress following the attack, President Bush vowed to take the battle against terrorism to those persons, such as Osama bin Laden; to those organizations, such as the Taliban; to those networks, such as Al-Qaida, and to any nations that acted as conspirators in the attack on the United States.

I supported the resolution granting the President the authority to use military force against the perpetrators of this terrible attack, and I applauded his address to Congress and to the Nation. I note that the President wisely drew lines of discrimination, specifying that the punishment must be directed against those who are guilty of this crime, so that we cannot be accused of broadening our response to those who were not involved in the September 11 attack. Our resolve and our ferocity of response must carefully discriminate against the guilty, and surely if we do so, all men of reason, all nations of conscience, will support and applaud us.

I was reassured by the President's remarks. But as I delved more deeply into the resolution passed by Congress, I began to have some qualms over how broad a grant of authority Congress gave him in our rush to act quickly. Because of the speed with which it was passed, there was little discussion establishing a foundation for the resolution. Because of the paucity of debate, it would be difficult to glean from the record the specific intent of Congress in approving S.J. Res. 23. There were after-the-fact statements made in the Senate, and there was some debate in the House, but there was not the normal level of discussion or the normal level of analysis of the language prior to the vote that we have come to expect in the Senate. And so I think it is important to take a second look at S.J. Res. 23, to examine its strengths and weaknesses, and to put on record the intent of Congress in passing the resolution.

I am not sure we are doing that. Just as this is my speech, just as it is one Senator's observations, those observations might have been worth a little more had we made them before we passed that resolution in such a great hurry.

Two aspects of the resolution are key: First, the use of force authority granted to the President extends only to the perpetrators of the September 11 attack. It was not the intent of Congress to give the President unbridled authority—I hope it wasn't—to wage war against terrorism writ large without the advice and consent of Congress. That intent was made clear when Senators modified the text of the resolution proposed by the White House to limit the grant of authority to the September 11 attack.

Let me at this point read into the RECORD the original text of proposed joint resolution submitted to the Senate leadership by the White House on September 12 this year of our Lord, 2001. And I read it: "Joint resolution." The title: "To authorize the use of United States Armed Forces Against Those Responsible for the Recent Attacks Launched Against the United States."

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad, and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence, and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States,

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled—

And here is the resolving clause that was in the proposed legislation submitted by the White House to the Senate leadership—

That the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, harbored, committed, or aided in the planning or commission of the attacks against the United States that occurred on September 11, 2001, and to deter and pre-empt any future acts of terrorism or aggression against the United States.

That completes the proposed resolution the White House submitted to the Senate leadership. Senators modified this text that was proposed by the White House to limit the grant of authority, and that limitation is extremely important because the resolution also gives the President unprecedented authority to wage war not only against nations involved in the September 11 terrorist attacks, but also against individuals and organizations.

The resolution as passed by the Senate on September 14 is as follows:

S.J. Res. 23. Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad, and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence, and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States,

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled:

Section 1. Short Title.

This joint resolution may be cited as the "Authorization for Use of Military Force".

Sec. 2. Authorization for Use of United States Armed Forces.

(a) That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) War Powers Resolution Requirements.—

(1) Specific Statutory Authorization.—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) Applicability of Other Requirements.—Nothing in this resolution supersedes any requirement of the War Powers Resolution.

So, S.J. Res. 23 invokes the War Powers Resolution. Quite an addition to the proposal that was sent to the Senate from the White House.

The crux of the War Powers Resolution is that it provides specific procedures for Congress to participate with the President in decisions to send U.S. forces into hostilities. Section 2(b) of S.J. Res. 23 specifically invokes section 5(b) of the War Powers Resolution and further declares that nothing in S.J. Res. 23 supersedes any requirement of the War Powers Resolution.

Section 5(b) of the War Powers Resolution provides that the President must terminate any use of United States Armed Forces after 60 days unless Congress has declared war or has enacted a specific authorization for such use of United States Armed Forces. S.J. Res. 23 provides that authorization within the context of the September 11th attack.

Let me read that again because the emphasis is on the word "that." I am going to redo this. S.J. Res. 23 provides that authorization—that we have just read about—within the context of the September 11 attack.

Those persons, organizations or nations that were not involved in the September 11 attack are, by definition, outside the scope of this authorization.

By signing S.J. Res. 23 into law, as he did on September 18th, it would seem that the President explicitly, or at least implicitly, accepted the terms of the Resolution, including the constraints imposed by the War Powers Resolution.

However, as clear as the language appears on its face, it is noteworthy that President Bush, like other presidents before him, including his father, specifically noted in the statement he issued when he signed the resolution that despite his signature, he maintains "the longstanding position of the executive branch regarding the President's constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution."

Every President since the enactment of the War Powers Resolution in 1973 has taken the position that the War Powers Resolution is an unconstitutional infringement of the President's constitutional authority as Commander in Chief to deploy U.S. forces into hostilities.

This does not mean that President Bush will use that argument to completely shut Congress out of the process of deploying troops where hostilities are taking place or immediately threatened to take place. But it

does mean that President Bush, like his predecessors, is likely to use that argument to consult with Congress and report to Congress on his own terms and his own timetable instead of the terms and timetable spelled out in the war powers resolution.

Last week, President Bush submitted his first report to Congress on the new U.S. Campaign Against Terrorism. In his letter, the President said, "I am providing this report as part of my efforts to keep the Congress informed, consistent with the war powers resolution and Senate Joint Resolution 23. . . ." While the intent may have been to inform, the letter was decidedly lacking in details. Notwithstanding the requirement of the War Powers Resolution, the President provided no details on the proposed scope and duration of the deployment. The only indication of a timetable was the president's assertion that the campaign against terrorism "Will be a lengthy one."

Mr. President, I ask unanimous consent that a copy of the President's report to Congress be included in the RECORD following these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit No. 1.)

In short, what appeared to be crystal clear to Congress when it passed the use of force resolution appears to be a matter of very different interpretation to the President. I wonder, in retrospect, if a few hours, or indeed if a very few hours, of searching debate and a little more research prior to the passage of S.J. Res. 23 might not have resulted in a more clearly defined grant of power. We may never resolve the political tension between the executive and legislative branches over the constitutional division of war powers, but we might have been able to better clarify the intent of S.J. Res. 23. Such clarity is important.

This is not a matter that no lack of goodwill will end tomorrow, or a week from tomorrow, or perhaps a year from tomorrow. This resolution, such as the use of force resolutions granted in the past, has no sunset clause. These resolutions remain in force unless Congress repeals them. For all we know, this President could just simply dust off, just that easy—dust it off; dust it off—dust off the 1991 gulf war resolution. The President could just as easily dust off the 1991 gulf war resolution which granted use of force authority to his father, to cite congressional authority to sweep Iraq into the current conflict regardless of whether it had anything to do with the September 11 attack.

The President, of course, does have limited authority under the War Powers Resolution to prosecute terrorist organizations that operate against our interests and the interests of all peace-loving nations. He has that power regardless of whether Congress has passed a resolution granting him specific authority. He has that inherent power under the Constitution, but he

may not exercise it without triggering the reporting and termination requirements of the War Powers Resolution. In his address to Congress, the President cited organizations which are known terrorist organizations in the world. Regardless of their history, if those organizations were not involved in the September 11 attack, they fall outside of the broad grant of authority provided by the Congress for the President to act in S.J. Res 23.

I am not making the case for them by any means. I am simply saying that we in the Senate should have had some things to say publicly about this resolution before we passed it.

We should have had some debate. The President could take action against them if he deemed it necessary, but such action would trigger the War Powers Resolution, wouldn't it? By law, the President would have to report to the Congress on any actions he might take in regard to those organizations, and seek new specific authorization from Congress if he planned to engage in military action for more than 60 days. But will he? Will he?

The intent of the use of force authorization Congress approved in the aftermath of the attack on America is clear. It is firmly anchored to those individuals, organizations, or nations who were complicit in the September 11th attack. Extended operations against other parties or nations not involved in the attack would require—or would it—additional specific authorization beyond the 60 day period provided for in the War Powers Resolution. Whether the language of S.J. Res. 23 adequately supports the intent is another matter.

Mr. President, it may seem to some as though I am belaboring a fine point—splitting hairs, if you please—during a time of national crisis. One need not be mistaken about it—I support our President in his efforts to bring to justice the evildoers who attacked the United States on September 11th. Congress has clearly demonstrated its resolve and its unity in that regard. I don't think anyone need have any doubts about that. But I have also taken an oath to protect and defend—so has every Senator in this body—the Constitution of the United States. Article I Section 8 of the Constitution grants to Congress the exclusive power to declare war. In taking any action to cede that authority to the Executive Branch, Congress must act with extreme care and caution.

Despite the speed with which Congress passed S.J. Res. 23, an effort to inject care and caution into the process was certainly made. The ramifications of the proposed resolution sent here by the White House were weighed and they were considered. Important modifications were made to the text originally proposed. I would not have voted for it otherwise. I had no time to study it. I was busy in my Appropriations Committee working on the bill appropriating \$40 billion, so I had no time whatever to participate in the study

and modifications of that resolution. But it was considerably modified. So there was considerable modification made to the text originally proposed.

In an effort to achieve the goal of enabling the President to wage war, as he calls it, against those responsible for the September 11 attack on the United States, while ensuring that the war cannot be broadened to encompass other targets without the knowledge and the consent of Congress, whether those modifications went far enough, whether the resolution ultimately adopted by Congress accomplishes precisely what we wish to accomplish, we have yet to know with certainty.

The President has declared ours to be a nation at war with global terrorism. We have united behind him in this hour of crisis, but we remain mindful of the somber history of this nation, of the blood that has been shed over the centuries to protect and defend the ideals enshrined in our Constitution. We must, therefore, be as constant in our vigilance of the Constitution as we are strong in our battle against terrorism.

I urge my colleagues to keep clearly in mind their fundamental responsibility to support and defend the Constitution. That is the oath we took with our hands, at least figuratively speaking, on the Bible "so help me God." Every one of these Senators took that oath, a fundamental responsibility to support and defend the Constitution and to fully and fairly debate the major policy issues of the moment because this is going to be a long time. Whatever powers we cede will have been ceded for a long time, perhaps.

As we move through the rest of this session of Congress, let us stop, let us look, let us listen, listen to what our hearts are telling us. Let us listen to what this Constitution is telling us. Let us act as expeditiously as possible on the urgent matters before us, but let us also act with calm, careful, and thorough deliberations.

EXHIBIT NO. 1

ORIGINAL TEXT OF PROPOSED JOINT RESOLUTION SUBMITTED TO THE SENATE LEADERSHIP BY THE WHITE HOUSE, SEPTEMBER 12, 2001

Joint resolution to authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad, and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence, and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States,

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to use all necessary and appropriate

force against those nations, organizations or persons he determines planned, authorized, harbored, committed, or aided in the planning or commission of the attacks against the United States that occurred on September 11, 2001, and to deter and pre-empt any future acts of terrorism or aggression against the United States.

S.J. RES. 23

(Passed by the Senate, September 14)

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad, and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence, and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States,

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of Military Force".

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) WAR POWERS RESOLUTION REQUIREMENTS.—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this resolution supersedes any requirement of the War Powers Resolution.

THE WHITE HOUSE,
OFFICE OF THE PRESS SECRETARY,
September 24, 2001.

LETTER TO CONGRESS ON AMERICAN CAMPAIGN AGAINST TERRORISM

(Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate)

DEAR MR. SPEAKER: (DEAR MR. PRESIDENT:) On the morning of September 11, 2001, terrorists hijacked four U.S. commercial airliners. These terrorists coldly murdered thousands of innocent people on those airliners and on the ground, and deliberately destroyed the towers of the World Trade Center and surrounding buildings and a portion of the Pentagon.

In response to these attacks on our territory, our citizens, and our way of life, I ordered the deployment of various combat-equipped and combat support forces to a

number of foreign nations in the Central and Pacific Command areas of operations. In the future, as we act to prevent and deter terrorism, I may find it necessary to order additional forces into these and other areas of the world, including into foreign nations where U.S. Armed Forces are already located.

I have taken these actions pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive. It is not now possible to predict the scope and duration of these deployments, and the actions necessary to counter the terrorist threat to the United States. It is likely that the American campaign against terrorism will be a lengthy one.

I am providing this report as part of my efforts to keep the Congress informed, consistent with the War Powers Resolution and Senate Joint Resolution 23, which I signed on September 18, 2001. As you know, officials of my Administration and I have been regularly communicating with the leadership and other Members of Congress about the actions we are taking to respond to the threat of terrorism and we will continue to do so. I appreciate the continuing support of the Congress, including its passage of Senate Joint Resolution 23, in this action to protect the security of the United States of America and its citizens, civilian and military, here and abroad.

Sincerely,

GEORGE W. BUSH.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. I know the Senator from Michigan said he wanted to speak. I am anxious to respond to some of what Senator BYRD said. I ask unanimous consent I be allowed to follow the Senator from Michigan.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I thank my good friend from Minnesota.

While Senator BYRD is on the floor, let me thank him for another of a long series of pleas that we be aware of our responsibility under the Constitution of this country, particularly when it comes to issues of war and peace. Surely the cautionary language of the great Senator from West Virginia is something which I hope all Members will heed.

I, personally, treasure the copy of the Constitution which he has autographed for me. I have it on my desk, and I look at it constantly. It is not quite as close to my heart as the Constitution which the Senator from West Virginia carries with him at all times, but it is always a few feet away from me when I sit at my desk. I thank him for again pointing out to the Senate the responsibility we have in these particularly difficult days.

Mr. WARNER. I associate myself with those remarks from a member of the Senate Armed Services Committee. We are pleased that he has continued this long association, although his duties are very heavy in other areas. It is interesting that only John Stennis was ever chairman of the Appropriations Committee and also served on the Senate Armed Services Committee. He was a great and dear friend of yours, we know, and teacher to all Members.

We thank our colleague for this very important speech he has given today.

Mr. BYRD. If the Senator will yield, I thank my friend from Virginia, the State which gave to our country George Washington and James Madison, the father of the Constitution. I thank him very much.

Mr. WARNER. I thank my good friend and colleague.

Mr. LEVIN. Mr. President, the Senator from West Virginia has made reference to two actions we have taken in the Senate. I would like to comment briefly on both.

First, on the second action we took, giving the President authority to respond to the attacks of September 11, the Senator did us a great service by laying out the version of that resolution with which we started and the version with which we ended. I made the same effort that day we voted on it, but I do not believe I actually put the drafts in the RECORD. I made reference to them, but I think that perhaps this is the first time the actual draft we began with is in the CONGRESSIONAL RECORD. I think that is a very important service.

The resolution we adopted, as the Senator from West Virginia said, is much narrower in terms of its authority. The draft we began with, that the White House submitted to us, had unprecedented broad authority, far too broad for most of us. It was unlimited by time and by other limits, as to what the President could do in response to these attacks.

The final resolution we adopted provided that the authority granted to the President is to respond to the attack of September 11—not to some unspecified future attacks but to that particular attack of September 11, and also, as the Senator from West Virginia said, made specific reference and inclusion by reference to the provisions of the War Powers Act.

Those and other changes in the language of the resolution were significant. Our good friend from West Virginia pointed out that there was much greater care and caution—to use his words—in the final resolution we adopted. I hope history proves that those of us who worked so hard on that final resolution indeed used enough care and caution to satisfy the requirements of the Constitution and just good common sense. But history will judge that one—and I hope will judge it well—because the differences between the original draft resolution submitted to us and the one we adopted are indeed significant changes, major changes.

As a matter of fact, I want to give our staff some real credit because they worked through the night with us in order to craft those changes which we were then able to adopt unanimously in the Senate.

On the first matter the Senator from West Virginia raised, which was the language which was in the original bill on national missile defense—as a member of the Armed Services Committee I

know he is familiar with this history—let me recount it for those who are not members of the committee.

As chairman of that committee, we asked the White House and the administration to tell us whether or not the activities for which they were requesting funding, the test activities for missile defense, were consistent with the ABM Treaty or would conflict with the ABM Treaty. We made many requests for that information, and we never received the answer to it.

That is critically important information because if we, as the appropriators and authorizers, are going to put funds into a bill for testing activities which are in conflict with an arms control agreement and which could have huge ramifications in terms of our own security, in the view of many of us resulting in a unilateral withdrawal which could make us less secure rather than more secure—if we are going to take that action as a Congress to appropriate those funds, we should do so knowingly.

We could not get that information. And so, as chairman of the committee, I drafted language which gave us an opportunity down the road, if and when the administration determined that the testing activities conflicted with the Anti-Ballistic Missile Treaty—would give us the opportunity to vote whether or not we approved such expenditures.

If we couldn't find out then, if we couldn't get that information to allow us to make that kind of an informed judgment, then I thought it was critically important to have that information so we could at a later point decide whether or not we would approve that expenditure. We won that argument by one vote in the Armed Services Committee. I was disappointed that all of our Republican colleagues voted against it. We were then informed that if that language remained in the bill, the bill would be vetoed by the President. So we started with that premise.

That doesn't mean the language was not the right language. In my judgment, it was and is the right language. But what it means is that we knew the bill would be vetoed.

Then came along the events of September 11, and the question was then whether or not that would make it possible for us to preserve that language in a totally different environment or whether or not it would make it more difficult to preserve language which I, as its author, thought was very significant, very important language.

There are many Members of this body who have devoted large amounts of time to arms control issues, including the chairman of the Foreign Relations Committee, but I must say I have spent a good deal of time in my career working on these arms control issues, so this became a very significant issue to me. I believe this unilateral withdrawal from the arms control agreement will make us less secure and not more secure. If I thought unilateral

withdrawal from this treaty would make us more secure, I would favor the unilateral withdrawal. I would give notice to withdraw if I believed it would make us more secure—because that is the issue. We are not here to defend a treaty; we are here to defend the country. In my judgment, the unilateral withdrawal from this treaty would result in such a negative reaction on the part of a number of countries that would respond to that withdrawal that overall, on balance, we would end up being less secure, and we would do so in order to commit ourselves to testing a system which is a defense against the least likely means of attack, a missile attack.

We have been told by the Joint Chiefs over and over again that the least likely way we would be attacked, the least likely delivery system for a weapon of mass destruction, would be a missile. The most likely means would be a truck or a ship, some more conventional means—for a number of reasons, one of which being those conventional means—trucks, ships, whatever—are more accurate, cheaper, and—critically important—do not have what we call a return address like a missile. A missile attack would lead to the instantaneous destruction of any country that attacked us, including North Korea. And since the maintenance of their regime is their No. 1 goal in North Korea, according to our intelligence community, it is very unlikely that North Korea would attack us with a missile. It would lead to their instantaneous, or almost instantaneous, destruction.

So I believe that to unilaterally withdraw from a treaty in order to put us closer to a defense against the least likely means of attack, and doing so unilaterally, which would produce a reaction on the part of a number of countries, including Russia and China, which would overall make us less secure since they would build up their forces faster, they would not dismantle their weapons as Russia is doing, they would put multiple warheads on missiles—called MIRVing—they would no longer participate in dismantling weapons, which means we would have more and more nuclear material on Russian soil subject to proliferation, subject to pilferage, it struck me and strikes me that unilateral withdrawal leaves us, overall, less secure.

That is why I worked so hard on getting that language included. I thought, if Congress is going to provide the funds for that kind of activity that leads to the unilateral withdrawal from an arms control treaty, Congress should take the responsibility, under that oath to uphold the Constitution of the United States, to know what we are doing.

That was the driving force behind the language I drafted. So that language comes in the bill that is now being considered on the floor giving Congress the opportunity to have a voice before funds it appropriates are used for that purpose. It gives us an opportunity to

know that in fact the funds are going to be used for an activity which conflicts with the Anti-Ballistic Missile Treaty.

Then came the event of September 11. The argument which the opponents of my language made was that my language tied the hands of the Commander in Chief, because no longer could he move on his own without authority for appropriations; he would have to first come back to us for that authority.

Frankly, I don't think that argument comes close to outweighing the arguments on the other side of this issue. Nonetheless, in that environment I reached the conclusion that that argument was going to prevail and it was not the time, immediately following the events of September 11, for that argument to be resolved.

It was a very practical judgment on my part as its author that it was about the worst time we could possibly pick—not that it was the time of our choosing, but it would have been the worst time to have a debate which had such crucial importance. It struck me as being far preferable that we preserve our opportunity to present this issue later in a separate bill that went on the calendar and that the majority leader could then attempt to call up. That language is now part of a bill that is on the calendar which the majority leader can at a later point call up.

Will it be more difficult for him to call it up than it would have been under the language had it remained embedded in the bill? The answer is yes, it will be more difficult because he will have to move to proceed if he cannot get the unanimous consent.

But given the fact that the President was going to veto this bill and therefore this language was not going to end up in this bill in any event even if it survived the Senate, and there were those of us who had very strong feelings about the importance of avoiding a unilateral rift in a strategic relationship with Russia that has produced such stability, and for such little advantage, I made the judgment that it would be wise to preserve that argument by placing it in a separate bill that the majority leader at least could attempt to call up at a later date and which would be on the calendar. But what I saw otherwise was that this language was going to be removed by a vote of the Senate, and having an added disadvantage that we would be debating a security issue showing disunity at a time when we wanted to have unity.

That was but one factor in my thinking, the other factor being that, as a matter of timing, this issue should be debated at a time when at least there would be a fairer opportunity and a setting separated from the events of September 11 where the argument that we were tying the hands of the Commander in Chief would have less of an emotional impact.

I may have been right; I may have been wrong. But it was a judgment

which I expressed to the body before the actions were taken. I indicated that prior to those actions being taken where we divided this language and put it into a separate bill, we should leave this debate to a later time.

Those are key words which are sometimes forgotten. This debate has not gone away. It will not go away. I believe it is very unlikely that the President under these circumstances is going to withdraw unilaterally from this treaty.

That is my own judgment. Surely the events of September 11 have made it so clear that collective action against terrorism and collective action for our security is essential and that unilateral action on our part is not going to make us secure, we need a lot of other countries to join with us if we are going to be secure. Acting unilaterally to withdraw from an arms control treaty in this setting it seems to me is highly unlikely.

I know that the White House and the President say they are determined to get beyond the ABM Treaty, as they put it. But surely these events have shown that we need to act collectively in a civilized world against the uncivilized terror which has been perpetrated and inflicted upon us.

I again thank my friend from West Virginia. I don't know of anybody in this body who more eloquently and more consistently describes the responsibilities of this body. I have outlined in the best way I can what I believe my responsibility is and what my responsibility was.

My committee made a decision and the Senate made a decision after we described the language that was in this bill. I think we made the right decision. It allows those of us who believe strongly in the importance of avoiding a rift in a relationship and a unilateral withdrawal from an arms control treaty—it is consistent with our beliefs—to preserve this argument for a later date. As I said on the floor prior to the action we took, we should leave this debate for a later time; and, I must add, as I have tried to say a number of times since, at a time when I think we have a better chance of arguing the pros and cons of our position in an environment where we at least maximize our opportunity to prevail. That doesn't mean I am confident that we will. I hope we will prevail if and when that moment comes. At least I believe we have a greater opportunity when the debate takes place at a later time and in a different setting than we do in the short term.

I thank my friend from Minnesota. I have taken more time than I told him I would take.

Mr. WARNER. Mr. President, if I might take a few minutes, I think it is important that the RECORD of the proceedings today also make reference to the fact that I and many others believe that the events of September 11 spoke volumes for the President's position that we should not at this time be in

any way less than forceful in trying to explore all the options to develop a limited defense system protecting this Nation against a limited attack such as future generations, when they look back at this hour of tragedy, will say that our country did not move forward on all fronts. None of this would have been envisioned. We did not envision the tragedies of September 11. In many respects, some still cannot envision that this country needs a defense against limited attack.

I must say yes, I accept my distinguished chairman's statement to the effect that he made certain decisions. I commend him for it. But I believe several of us had spoken to him in the context of what was going to be undertaken had that decision not been reached by our chairman.

I inquire of the chairman: We want to have our colleague have his opportunity to speak here momentarily. Could we get some time estimate because work is being done on this side.

Mr. LEVIN. The Senator from Minnesota was kind enough to allow me to precede him, although he was recognized first so we could comment on Senator BYRD's comments. It would now be up to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I probably need about 20 minutes.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the Senator from Minnesota concludes his remarks we then return to consideration of the bill.

Mr. WARNER. Mr. President, reserving the right to object, is the subject matter of the address of the Senator from Minnesota relevant to the pending matter before the Senate; namely, the Armed Forces bill?

Mr. WELLSTONE. That is correct, although I want to respond to Senator BYRD's statement.

Mr. WARNER. May I also inquire of the chairman and the Senator from Minnesota, our colleague from Connecticut has an amendment directly related in some respects to aspects of the bill—

Mr. WELLSTONE. Mr. President, I have been here a long time, and I asked unanimous consent to follow Senator LEVIN. I will speak and try to cover the topic, and then I will yield the floor.

Mr. LEVIN. Mr. President, if the Senator will yield for one additional unanimous consent request, I ask unanimous consent that following the remarks of the Senator from Minnesota, we return to the consideration of the bill and that Senator DODD be immediately recognized to offer an amendment.

Mr. WARNER. Again, reserving the right to object, we do have a stack of agreed-upon amendments. As soon as we get that behind us, our staffs can devote their time to additional amendments.

So I ask the Senator from Connecticut, how much time will he want for the presentation of his amendment

and such rebuttal or concurrence that may be made or voiced by other colleagues? Then we can get some better idea how soon we can return to the issue of amendments.

Mr. DODD. Mr. President, if my colleague and friend from Virginia will yield, I anticipate taking no longer than 15 minutes myself. Others may want to be heard.

Just for the purpose of letting Members know, this will be an amendment for which, frankly, the chairman and ranking member are very much responsible; and that is the fire assistance program in which we are dedicating, in this case, to the 350 or so firemen who lost their lives in New York on September 11, and those who fought here at the Pentagon, to increase the authorization levels.

Others may want to be heard on that. On my part, 15 minutes ought to be more than adequate.

Mr. WARNER. On that subject, while I personally am supportive of the goals of the amendment, I must reserve the rights of Senators on this side, particularly those on the Commerce Committee. I would presume that the chairman and ranking member may desire to at least address the Senate on this matter prior to any final action on the Senator's amendment.

Mr. DODD. I say to my friend, we have notified the Commerce Committee about this amendment. Again, I think they understand that given the constraints remaining for us to offer a freestanding proposal, and given the history of this bill associated with the DOD bill, I will leave it to them to address it themselves. But we have talked about it.

Mr. WARNER. I say to my distinguished chairman, I would presume then that this amendment would have a rollcall vote sometime tomorrow.

Mr. DODD. Right.

Mr. WARNER. Would you permit me to incorporate in your UC a request that 30 minutes be granted to the chairman and ranking member of the Commerce Committee prior to any vote on the amendment by our colleague from Connecticut?

Mr. DODD. The only request I would make is this amendment be considered prior to the cloture vote.

Mr. WARNER. I beg your pardon.

Mr. DODD. That it be considered prior to the cloture vote.

Mr. WARNER. I am not sure. The vote takes place at 9:30 tomorrow morning. As I understand it, there is an order to that effect.

My understanding is that the standing order is that the Senate will vote at 10 o'clock tomorrow morning on a cloture motion; is that correct?

The PRESIDING OFFICER (Mr. CORZINE). That is correct.

Mr. WARNER. Then I would say to my colleague from Connecticut, how do we achieve that?

Mr. DODD. We could have a voice vote. We do not need a recorded vote.

Mr. WARNER. I would have to object to a voice vote. I am dutybound, you

understand, to protect colleagues on this side, particularly those on the Commerce Committee which has overall jurisdiction.

Mr. DODD. If my colleague will yield, if there is no objection to the amendment being incorporated in the bill, this may be the one opportunity where we will be able to do something about these firefighters.

Mr. WARNER. I want to help you. I am going to vote with you. But I am dutybound, as you understand, to protect those on this side. I do not know what the chairman of the Commerce Committee, on your side, has said about this issue, but I do know members of the Commerce Committee, on this side, certainly must be protected—at least be given an opportunity to speak to this amendment if it is brought up for purposes of a rollcall vote.

Mr. DODD. Why don't we proceed this way, if we could: After the Senator from Minnesota has been heard, if I can offer the amendment, I would like to discuss it. In the meantime, we can have conversations. We have already had conversations with members of the Commerce Committee. If they are going to object to us voting on this prior to the cloture vote tomorrow, or allow us to have a voice vote on this, then so be it. But if not, then it could go through this evening. We ought to try to do it.

Is that all right?

Mr. WARNER. Mr. President, that seems to me to be an orderly procedure.

Mr. LEVIN. Mr. President, I ask unanimous consent that immediately following the statement of the Senator from Minnesota, we return to the Defense authorization bill and Senator DODD be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Reserving the right to object, could that be 15 minutes?

Mr. LEVIN. Just to offer it.

Mr. WARNER. He wanted 15 minutes to offer it, which is fine. I have no objection, but I do want to get back to this question of amendments.

Mr. LEVIN. And that Senator DODD's speech be limited to 15 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Minnesota.

THANKING SENATOR BYRD

Mr. WELLSTONE. Mr. President, before Senator BYRD leaves the Chamber, I also want to thank him for his service to the Senate and the country. I am annoyed with myself for not having thought that we should have as a part of the RECORD the difference between the language that came from the White House and the resolution that we passed. It is so important that that be part of the RECORD.

I say to my colleague that up until about 1 o'clock in the morning, I did

not think I could support it. I thought it was too broad, too open ended. I think Senator LEVIN did say this, but while you were busy on that appropriations bill, Senator LEVIN was one of the key Senators—along with staff—who really did yeomen's work to try to have that resolution focus on the September 11 attacks. It was entirely different wording.

But I thank you, Senator BYRD, for what you have done today in this Senate Chamber.

Mr. BYRD. Mr. President, will the Senator yield, just very quickly?

Mr. WELLSTONE. I am happy to yield.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Senator for his observations. I would be remiss if I did not likewise express my gratitude to Senator LEVIN and to Senator BIDEN and to other Senators who worked together to modify that language and to greatly improve the language over what it was when it was sent from the White House to the Senate.

Mr. WELLSTONE. I thank the Senator.

I also say to my colleague, I believe Senator KERRY from Massachusetts, and also the majority leader, Senator DASCHLE—all of them—

Mr. BYRD. Yes, absolutely.

Mr. WELLSTONE. Did yeomen work.

REFUGEE CRISIS IN AFGHANISTAN

Mr. WELLSTONE. Mr. President, I want to talk about an amendment that I hope will be part of the Defense authorization bill. But as long as we are talking about the resolution for a moment, I want to borrow from a piece I just finished writing. I will not go through the whole piece, but that deals with the humanitarian catastrophe that is now taking place in Afghanistan. I think it is relevant to talk about this.

You have a situation on the ground that is unimaginable: 4 years of relentless drought, the worst in 3 decades, and the total failure of the Taliban government to administer to the country. Four million people have abandoned their homes in search of food in Pakistan, Iran, and elsewhere. Those left behind now eat meals of locust and animal fodder. This is in Afghanistan.

Five million people inside this country are threatened by famine, according to the United Nations. As President Bush made clear, we are waging a campaign against terrorists, not ordinary Afghans—I think that is an important distinction to make—who are some of the poorest and most beleaguered people on the planet and who were actually our allies during the cold war.

Any military action by our country must be targeted against those responsible for the terror acts and those harboring them. And we must plan such action to minimize the danger to innocent civilians who are on the edge of starvation.

Let me repeat that one more time. Any military action must be targeted against those who are responsible for the terror acts and those who have harbored them. And we must plan such action to minimize the danger to innocent civilians who are on the edge of starvation. And we must be prepared to address any humanitarian consequences of whatever action we take as soon as possible.

Mr. President, I ask unanimous consent that a piece that I just finished writing be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. MUST LEAD EFFORTS TO PREVENT REFUGEE CRISIS IN AFGHANISTAN

(By U.S. Senator Paul Wellstone, Chairman, Subcommittee on Near Eastern and South Asian Affairs, September 28, 2001)

The September 11 attacks in New York and Washington require our country to respond assertively and effectively against international terrorism. As the Administration reviews all its options, it must consider the humanitarian consequences of any military action against terrorist sites in Afghanistan, and take urgent steps now to address them.

Even before the world focused on it as a sanctuary for Osama bin Laden and other terrorists, Afghanistan was on the brink of a humanitarian catastrophe, the site of the greatest crisis in hunger and refugee displacement in the world. Now the worsening situation on the ground is almost unimaginable. After four years of relentless drought, the worst in three decades, and the total failure of the Taliban government in administering the country, four million people have abandoned their homes in search of food in Pakistan, Iran, Tajikistan and elsewhere, while those left behind eat meals of locusts and animal fodder. Five million people inside the country are threatened by famine, according to the United Nations.

As President Bush made clear, we are waging a campaign against terrorists, not ordinary Afghans, who are some of the poorest and most beleaguered people on the planet and were our allies during the Cold War. Any military action must thus be targeted against those responsible for the terror attacks and those harboring them; planned to minimize the danger to innocent civilians on the edge of starvation; and prepared to address any humanitarian consequences as soon as possible. Since it seems clear that a major international refugee influx will require a massive expansion of existing refugee camps, and creation of new ones, the U.S. and our U.N. Security Council allies should also be thinking now about how to protect those camps, including possibly using a U.N.-sanctioned military force drawn primarily from Arab nations.

Osama bin Laden is not a native of Afghanistan, but of Saudi Arabia. Most Afghans do not support bin Laden. Instead, ninety percent of the Afghan people are subsistence farmers struggling simply to grow enough food to stay alive. War widows, orphans, and thousands of others in the cities are dependent upon international aid to survive.

Now, anticipating military strikes by the U.S. hundreds of thousands of Afghan civilians are on the move, fleeing the cities for their native villages or for the borders. According to the U.N. High Commissioner for Refugees, nearly 20,000 have gathered at one Pakistani border crossing alone. The U.N. says it is the most tense border point in the world, with thousands of people out in the open, exposed to scorching days and frigid