

support for private business, a new electoral law, and a general election;

Whereas the Varela Project is supported by 140 opposition organizations in Cuba and has received no money or support from foreign citizens or foreign governments;

Whereas the Varela Project is the largest petition drive in Cuban history;

Whereas the Varela Project is a step in moving Cuba toward achieving international standards for human rights;

Whereas the goal of United States policy in Cuba is to promote a peaceful transition to democracy; and

Whereas the Varela Project is engaged in the promotion of a peaceful transition to democracy in Cuba: Now, therefore, be it

*Resolved,*  
That the Senate—

(1) supports the constitutional right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum;

(2) calls on the Cuban National Assembly to give serious consideration to the Varela Project petition in accordance with Article 88 of the Cuban Constitution and to the holding of a referendum on civil liberties, including freedom of speech, an amnesty for political prisoners, support for private business, a new electoral law, and a general election;

(3) praises the bravery of Oswaldo Paya and his colleagues in collecting 11,020 verified signatures in support of the Varela Project;

(4) calls on the Cuban government to provide its citizens with internationally accepted standards for civil and human rights, and the opportunity to vote in free and fair elections; and

(5) urges the President to support the right of the citizens of Cuba who have signed the Varela Project to petition the Cuban National Assembly for a referendum and the peaceful transition to democracy.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. REID. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators allowed to speak for not to exceed 5 minutes each.

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

#### WAR POWERS AND THE CAMPAIGN AGAINST TERRORISM

Mr. FEINGOLD. Madam President, today I would like to address one of the most complicated but ultimately one of the most important constitutional questions confronting this country as we respond to the atrocities of September 11: that is, the question of how America decides to go to war. This is no easy issue, but it is one that Congress is duty-bound to address.

As we know, war powers are purposefully divided under our Constitution. Under Article I, Section 8, Congress has the responsibility to declare war, and to raise and support the Armed

Forces. The President, under Article II, Section 2, is the Commander in Chief, which gives him responsibility for leading the Armed Forces. The War Powers Resolution of 1973 fulfills the intent of the Framers of the Constitution by providing a framework for balancing these powers, and thereby ensuring that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces into hostilities, or into situations where imminent involvement in hostilities is likely.

In April, I had a chance to chair a hearing in the Constitution Subcommittee of the Judiciary Committee to consider this balance of war powers authority under the Constitution, particularly as we move forward with our fight against terrorism. In the hearing, there was much praise for the respect demonstrated by President Bush, this President Bush, for both the Congress and the Constitution in seeking congressional authorization to respond with appropriate force to the attacks of September 11. The language in that authorization, Senate Joint Resolution 23, paralleled some of the careful oversight provisions contained in the use-of-force resolution that former President Bush obtained before launching Operation Desert Storm in 1991. In those two cases, both Presidents took the important and constitutionally mandated step of obtaining congressional approval for an expansive new military operation. And in both cases, I do believe, congressional support strengthened the President's response.

History demonstrates that respect for our Constitution and for the shared war powers authority of Congress is politically practical. Indeed, as our Founders and many subsequent commentators have recognized, the separation of war powers between the two branches of government wisely forces us to develop a broad national consensus before placing our Nation's young people in harm's way. And as we have seen time and again, the United States is indeed the most formidable military force on this planet, provided our soldiers are entrusted with a clear military goal, and through congressional authorization, with the popular mandate that is needed to back them up.

Senate Joint Resolution 23, which was passed by both Houses of Congress and signed into law by the President in the aftermath of September 11, provides the President with statutory authorization to prevent related acts of terrorism. In adopting the use-of-force resolution, the President recognized that Congress he said, "acted wisely, decisively, and in the finest traditions of our country." The resolution demonstrated that Congress has the capacity to fulfill its constitutionally mandated responsibility, and in so doing Congress can help unify the nation in a time of national crisis.

Under the careful structure of S.J. Res. 23, the President now has statu-

tory authority to prevent future terrorist attacks by responding with force against any nations, organizations or persons responsible for planning, authorizing, aiding or harboring the terrorists who were responsible for the September 11 attack. Now, given the unprecedented nature of the threat, this provides a pretty broad mandate to the President to respond militarily.

But this Congressional action, while admittedly broad, is not a blank check. The Resolution limits the President's authority in two essential respects.

To begin, the authorization is limited to situations where there is a connection to the events of September 11. The hearing in the Constitution Subcommittee considered the scope of such a limitation. As I will discuss at greater length, there was widespread agreement in the hearing that absent a clear finding that a state such as Iraq participated in, aided, or otherwise provided support for those who attacked the United States on Sept 11, the President would not be authorized, under the terms of S.J. Res. 23, to take new military action against Iraq. Senate Joint Resolution 23 does not provide unlimited authority to the President to take military action against all bad actors. At the same time, the authorization does foresee broad actions against those responsible for the September attack on the United States.

It is also important to recognize that S.J. Res. 23 states in no uncertain terms that the 1973 War Powers Resolution will continue to apply to our military operations against terrorism. This conforming language is identical to Public Law 102-1, which provided the authorization to use military force to oust Iraq from Kuwait in 1991. In all cases, the War Powers Resolution requires the President to consult with Congress on an ongoing basis on the status, scope, and duration of the hostilities. These consultations need not and should not provide Congress with what would be somehow a meddlesome and unacceptably dangerous role in determining tactical aspects of an active military campaign. But the required consultations must nonetheless assist Congress in its continuing responsibility to evaluate and make ongoing decisions about the broad objectives of an unfolding military operation.

The war powers consultations to date, in my view, have been inadequate. While the administration has taken significant steps to increase the frequency of briefings for Members of Congress, and we do appreciate that those consultations have been conducted as informational briefings, with little opportunity for substantive policy discussions or meaningful give-and-take. As such they do not in most cases reach the threshold level of consultations under the terms of the War Powers Resolution.

The House Report on the 1973 War Powers Resolution notes that "a considerable amount of attention was given to the definition of consultation.

Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated." The increasingly frequent meetings with Secretary Rumsfeld, Secretary Powell, and others, while welcome and appreciated, do not reach this level of consultation.

In addition, under the War Powers Resolution, the need for additional notification is triggered whenever U.S. Armed Forces are equipped for combat and introduced into a new foreign territory, or if additional Armed Forces are equipped for combat and introduced in numbers that substantially expand existing, previously authorized troop strengths. This is obviously relevant to some of the concerns coming up today.

These and other requirements do not apply to military training exercises, which is why the President must be clear about the precise role of U.S. forces in a number of ongoing counterterrorism training exercises in different countries. These requirements do not apply to that. In some cases, these counterterrorism training programs may cross the line into counterterrorism combat support, which would trigger the War Powers Resolution. So the President must provide clear information to help distinguish between these two types of antiterrorism activities. United States interests are not served through a shortsighted attempt to dodge congressional oversight by characterizing counterterrorism support as routine military training.

In the hearing before the Constitution Subcommittee, we also discussed the important provision within the War Powers Resolution that recognizes the immediate flexibility provided to the President to introduce U.S. Armed Forces into hostilities in the case of a national crisis created by an attack on the United States, or its territories, possessions, or Armed Forces. This provides the President with the flexibility to respond immediately to defend United States interests during an emergency.

But again, this is a limited exception. The War Powers Resolution specifically requires the President, "in every possible instance," to consult with Congress before introducing Armed Forces into situations where hostilities appear imminent. And even within this exception for emergency situations, the President must still seek congressional authorization within 60 days to sustain the operation.

My conclusion from the hearing on war powers authority within the context of our fight against terrorism is that to date the President has shown respect for Congress in seeking authorization to respond to the attacks of September 11. But the ongoing level of

consultation on our military campaign has not been adequate. In particular, additional attention must be given to the distinction between counterterrorism training and counterterrorism support for foreign troops during these consultations. It is clear that our national interests would be well served by sustained and forthright consultations between Congress and the President over these aspects of our military response to September 11.

The hearing also touched on one of the most important military decisions on the horizon. Several witnesses questioned the authority of the President to take military action against Iraq. The witnesses generally assumed that any strike against Iraq would be designed to defend the United States against Iraqi weapons of mass destruction, and that the President would not assert a direct link between Iraq and the September 11 attacks. As I have indicated, absent such a link between Iraq and September 11, witnesses suggested that the President might advance two legal justifications for taking up arms against Iraq without further, additional congressional authorization. But both justifications ring hollow, and rest on highly questionable legal grounds.

During the hearing, a witness from the Justice Department joined other witnesses in highlighting the authority of the President to launch military attacks as a form of preemptive self-defense. This expands the national emergency exception under the War Powers Resolution by asserting that the President must have the authority to act quickly and decisively to prevent a potential attack on United States interests. Now, few would disagree with the assertion that the President must have the authority to launch a preemptive strike in advance of an imminent attack on the United States. This understanding I think fits within the overall spirit and intent of the 1973 War Powers law, and it would be irresponsible to suggest otherwise. But the preemptive self-defense argument does not necessarily fit squarely with the situation in Iraq today.

Various press reports suggest that President Bush is considering plans for a new military campaign against Iraq sometime next year. If the President does plan to take such action next year, there is still plenty of time for the administration to initiate meaningful consultations with Congress over the necessity and scope of this new military campaign.

Some have also argued, unconvincingly to me, that consultation with Congress would be impossible because a preemptive strike against Iraq would require a high degree of stealth. But the administration has already spoken publicly of the need for regime change in Iraq, and unnamed officials have consistently leaked information to major news sources describing the scope of the proposed operation.

Moreover, it is now widely assumed that the operation would require a robust ground assault, and that our military build-up in the region would be both deliberate and plainly obvious to any careful observer. So this would not be a purely stealth operation. There would be ample time for congressional consultation as we move forward with fairly obvious military preparations for such a large offensive.

The second argument that is sometimes advanced to support a future military operation in Iraq is that Public Law 102-1, authorizing the use of force in 1991 to respond to Iraq's invasion of Kuwait, still provides ongoing congressional authorization for a major new strike against Iraq. Now, this is a more complex legal argument, but it fails on both legal and public policy grounds. To begin, the congressional authorization for Operation Desert Storm authorizes the President to use military force pursuant to United Nations Security Council Resolution 678. The clear intent of the Security Council in adopting Resolution 678 was to free Kuwait from Iraqi occupation, not to bring about regime change in Iraq. Moreover, United Nations Security Council Resolution 687 implemented a final cease-fire between Iraq, Kuwait and the United Nations Member States that participated in Operation Desert Storm. Although Iraq has certainly failed to comply with the terms of the cease-fire, that failure does not in itself provide automatic authority for the President to launch a significant new military campaign, with the entirely new objective of regime change in Baghdad.

My conclusion, then, is that absent a clear finding that Iraq participated in, aided or otherwise provided support for those who attacked the United States on Sept 11, the Constitution requires the President—it requires the President—to seek additional authorization before he can embark on a major new military undertaking in Iraq.

Since it is clear that Iraq has not adequately complied with weapons of mass destruction resolutions adopted by the Security Council, and that the Iraqi leadership continues to commit gross human rights violations against its own people while encouraging terrorist attacks abroad, the consultation and debate over our response to an Iraqi threat may well convince a majority in Congress that the United States must in fact take all necessary steps, including military action, to limit Iraq's capacity to produce weapons of mass destruction. My guess is that such a resolution would succeed, after a good Congressional debate. If this emerges as the shared decision of Congress and the President, the President would act from a strong and constitutionally unified position in launching a new military campaign. Indeed, the Constitution and the American people must demand such a unified response.

Why would I raise these issues today? Why are these war powers questions so

important? Why should following the letter of the War Powers Resolution be so important in the midst of this national crisis? I think it should because Congress and the President have a chance to carry out their duties with regard to war and peace in the way the War Powers Resolution dictates, and also in the way the Framers of the Constitution intended.

That kind of cooperation preserves our constitutional structure. It also increases the moral authority of the President to act forcefully. Given the unprecedented nature of the threats confronting us, and the complex environment within which we must respond to those threats, a powerful and constitutionally unified response remains essential. We must also remember that constitutional unity presents both a stronger international image of the United States to our friends and foes, and, at the same time, a more comforting image of U.S. power to many of our close allies in the campaign against terrorism. When we best honor our Constitution and our laws as they relate to the powers of war and peace, we also best prepare our Nation to defend that Constitution and those laws. We owe our Nation no less.

I thank the Chair, and I yield the floor.

#### AMERICA'S COMMITMENT AGAINST BIOTERRORISM

Mr. FRIST. Madam President, our vulnerability to a bioterrorist attack was highlighted by the events that unfolded last October, when anthrax took the lives of innocent Americans and put thousands more in jeopardy. How we address our vulnerabilities and respond to bioterrorism will be radically improved as a result of new legislation signed by President Bush. The greatest tool that terrorists have in their arsenal is to play on America's vulnerabilities and fears. This legislation makes great strides to significantly improve our ability to respond to bioterrorist threats. Yet it is critical that we provide the appropriate information so that families can prepare and protect themselves in the event of a potential attack. Information is power, and by better preparing ourselves, we can avoid being paralyzed by fear.

Many news organizations have already begun to do their part by providing the necessary information for communities to feel safe. Good Housekeeping, which is read by thousands of readers each month, is a good example. In its April edition, Good Housekeeping answered the questions readers often have about bioterrorism, gave suggestions families could use to protect and prepare themselves, and provided information on what Congress is doing to lessen our vulnerability to bioterrorist attack. The magazine went a step further by providing a form readers could fill out urging Congress to act quickly to address bioterrorism. I was pleased

that thousands of readers did respond with their views on this issue and the importance of passing legislation that would keep American families safe.

Last fall's anthrax attacks changed the way America looked at bioterrorism. Overnight, the fear of bioterrorism moved from a remote possibility, to a reality for which we must be prepared. The bioterrorism bill, which will soon be signed into law, will greatly improve our ability to respond to a biological threat, equipping communities with the tools they need to strengthen our local health centers and educate those first responders, the doctors, nurses and emergency personnel on the front lines. But information for the general public is also key to improving our readiness. I commend the many news organizations that have recognized this fact and continue to get Americans the information they need to feel safe and secure. The unique nature of terrorism requires all of us to work together. While the events of September 11 and the subsequent anthrax attacks have changed the world we live in, coming together to meet a common challenge remains the American way.

#### ADDITIONAL STATEMENTS

##### ESTONIA'S ROLE IN THE HOLOCAUST

• Mr. SMITH of Oregon. Mr. President, I ask that an article written by the U.S. Ambassador to Estonia, Joseph M. DeThomas, be printed in the RECORD. Ambassador DeThomas outlines important steps for the Estonian government to undertake to address Estonia's role in the Holocaust.

The article follows.

##### PAST, PRESENT AND FUTURE

(By Ambassador Joseph M. DeThomas)

In every interview I have had with the press since I arrived in Tallinn, I have been asked in one form or another, "What has surprised you about Estonia?" I have always answered by noting that some aspect or another about Estonia was even more positive than I expected. Early May, however, I was surprised in a different way. A report in a Russian weekly claiming that Simon Wiesenthal advocated a boycott of the Baltic States and Ukraine produced a firestorm of comment from the press, political circles, and some members of the public. The comments were angry, defensive, and—with regard to my government's position—erroneous. The Wiesenthal Center has categorically denied that Mr. Wiesenthal ever even gave this interview. I did not intervene in this discussion. Since arriving here, I have learned a very useful Estonian proverb, "Think nine times, speak once." I have used the intervening days since the story broke to think nine times about the past and what would be useful to do about it in the present. I would like to share my views.

First, let me make clear my own government's position. We believe there is more for all of us to do to deal with the crimes of the past, and the Holocaust is a crime of unique proportions. A prominent political leader here implied last week that the United States is satisfied that Estonia has done all it needs to do to deal with the Holocaust.

Just last month, however, Heather Conley, the Department of State's senior official responsible for the Baltic States called on the Baltic States to do more to deal with the damage from the Holocaust. The same is the case for the U.S. Senate. For example, recently, Senator Biden, the Chairman of the Senate Foreign Relations Committee, made a very strong statement about his concern about the resurgence of anti-Semitism in Europe and called on all countries aspiring to NATO membership to ensure that "the very ugly remnants of war-time fascism . . . be totally and permanently suppressed."

Estonia's World War II past was uniquely painful. The country and its people were not given the freedom to choose between good and evil. Terrible choices had to be made. Estonia suffered terribly under two periods of Soviet occupation as well as the Nazi German occupation. The fact that the Soviet occupation did more direct harm in Estonia, however, does not negate the fact that the Holocaust happened here too. As the conclusions of the Estonian International Commission for Investigation of Crimes Against Humanity demonstrated, some Estonians bear responsibility for participating in this evil. I believe all countries that lived through the nightmare of the last century need to deal with their crimes honestly and completely so that they cannot be repeated in the future. We must face history, not hide from it.

What does this mean with regard to Estonia's approach to the Holocaust? I suggest the following very modest steps:

1. Do justice where justice is needed. Since re-independence, no Estonian has been prosecuted for crimes committed during the Holocaust. In part, that may be because many were prosecuted during the Soviet period. But, there are still Estonian candidates for prosecution. These individuals should be pursued with the same vigor with which the state still pursues those suspected of Soviet crimes. And the time for this is now. The World War II generation is passing from the scene. Witnesses to the crimes are dying. Both the victims and the victimizers should see justice done before it is too late.

2. Recognize the Holocaust is part of Estonia's history. Compared to the other Baltic States, the states of Central Europe and even some neutral states during World War II, the Holocaust is less recognized as a part of the national history in Estonia. The Holocaust took place here. About one thousand Estonian Jews and even more non-Estonian Jews were murdered in this country. Yet, the day of remembrance for the Holocaust, Yom Hashoah, receives almost no notice in this country. Many sites involving Holocaust crimes here are not marked or remembered. A few sites have recently been commemorated. This should continue.

3. Teach our children about the past. I have been told Estonian school textbooks treat the Holocaust in about one-and-a-half pages. If this is true for most of Estonia, I would suggest that history texts on this subject already in other states in this region be translated into Estonian for use here. I understand such a step is already under consideration by the government. I hope that the Estonian Government follows the call of some Estonian NGO's to be more involved in the Task Force for International Cooperation on Holocaust Education, Remembrance and Research, to which 11 nations belong.

The evil of racism and anti-Semitism does not grow again and again because the decent majority advocates it actively. It returns because it is ignored or trivialized by the majority until it reemerges in a new generation. Estonia has emerged from a desolate past into a present full of promise, thanks to the work of its people. But, to ensure a positive future, I believe it essential that the