

The PRESIDING OFFICER (Mrs. BLACKBURN). Without objection, it is so ordered.

#### WAR POWERS RESOLUTION

Mr. KAINE. Madam President, I rise today to discuss the War Powers Resolution that I filed on Friday, January 3, with Senator DURBIN.

I spoke yesterday at some length about the painful history of relations between Iran and the United States and the escalating tensions in the last 3 years that have brought us to the brink of war. As we stand at the brink, with military actions by Iran and the United States causing battlefield casualties on the other side, I believe that it is imperative for Congress to reassert itself and make plain that no President should have the ability to take the Nation to war on his or her own.

Let me talk about the Constitution and about the value judgment underlying the allocation of war powers in the Constitution and then the resolution that is now pending, having been filed in the Senate.

First, on the Constitution, the Constitution as drafted in 1787 has a series of provisions. Some are somewhat vague. In the Bill of Rights, what is an unreasonable search? Some are extremely precise. You have to be 35 years old to be President. If you look at the Constitution, you can see a variety of provisions, some more specific and some a little more open-ended.

Actually, the war powers part of the Constitution—though not completely without ambiguity—is one of the clearest parts of the Constitution. In article I, the power to declare war is given to Congress, not to the President and not to the Judiciary—to Congress.

In article II, the President is declared to be the Commander in Chief of the military. If you read the constitutional debates at the time, what emerges is a fairly clear understanding by those who were at the Constitutional Convention in Philadelphia that was both clear but also quite unusual. The understanding was that for a war to start, Congress should vote for it to be initiated, but then, once started, the last thing you would need is 535 commanders in chief. So once Congress had voted to start a war, at that point the prosecution of the war becomes for the President and the military command, not to be micromanaged by 535 Members of Congress.

This was fairly clear, and it was very unusual. It was very unusual because at that point in history, in 1787, war and the declaration of war was not primarily legislative. It was for the executive. It was for the King, for the Monarch, for the Pope, for the Emperor, or for the Sultan. War had been, throughout history, an executive function, not a legislative function. But the Framers of the Constitution and the constitutional debates made plain that they were really trying to change human history, at least in so far as the United States went. Then, in this country, the

initiation of war would be done by Congress.

Why was it done that way? Well, we have the virtue of a Virginian who was not only one of the drafters of the Constitution but who kept notes of the Constitutional Convention and then wrote letters about what they intended. Ten years after the Constitution was written in 1787, James Madison wrote a letter to Thomas Jefferson and directly addressed why it is that the power to declare war is something for Congress. He said this: "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it." For this reason, we have "with studied care, vested the question of war in the Legislature."

They recognized that Executives were prone to war, and they wanted the legislature to have to sign off on the initiation of war. It was unusual then, and it is unusual now that the initiation of war is to be left to the legislature. Why is that provision in the Constitution? Why would we want to leave the question about whether war should be started to Congress rather than let the President do it as would be the case in other nations? It is about a value judgment.

As important as the constitutional provision is, I would argue that what is more important is the value judgment that underlies this requirement of congressional authorization, and the value judgment is about the men and women who serve in our military. Any war runs the risk that the young men and women who serve in our military could lose their lives or could be injured or could see their friends lose their lives or be injured. When we send troops into war, they may suffer an injury—traumatic brain injury, post-traumatic stress disorder—that will affect the entire remainder of their lives in dramatic ways. If we affect their lives in that way, we affect the lives of their families and friends.

The value judgment that sort of served as the pillar behind the provision that says Congress has to authorize war is this: If we are going to force young men and women to risk their lives, it should be based on a considered and open debate and a vote in full view of the American public. Then, there should be a vote about whether we are at war. If at the end of that debate—with the questions that get asked and the trading of perspectives—before the people's elected legislative branch, the legislature says that this is in the national interest and we should be at war, then, for those men and women who serve—yes, they are going to serve and risk their lives and risk their health and risk what might happen to them for the rest of their life—we will only ask them to do that if there is a considered judgment that war is in the national interest.

That is the value judgment that underlies the most unusual part of the

Constitution, that war can't be started except by Congress. If we have that debate and vote, then, it is a fair request to ask that of people—like my boy in the Marines or the 1 million-plus people who serve in the military. It is a fair request to deploy them and have them risk their lives.

But how dare we order troops into harm's way, where they could risk their lives or health possibly for the rest of their life, if we in Congress are unwilling to have a debate and have a vote. Sadly, throughout the history of this country—and this is a completely nonpartisan statement—with Whigs and Federalists, Democrats and Republicans, and with different parties in control of the legislative bodies and different parties represented in the White House, Congress has managed to figure out a way to avoid debate and avoid voting if they can.

War votes are tough. I have had to cast two during the time I have been in the Senate as a member of the Foreign Relations Committee. I have cast thousands of votes in my life as a city council member and as a Senator. I will tell you that a war vote is categorically different than any other vote you will ever cast. They are hard. They can be unpopular. There are going to be bad consequences of a war vote. There may be an understandable human tradition in Congress to try to avoid it, but it is a responsibility that cannot be avoided. How can we order people to risk their lives when we are unwilling to risk the political challenges of a vote on war? That is the constitutional history. That is why the article I branch—the first among equals—is charged with the responsibility of initiating war, and that is the value judgment that underlies that constitutional provision.

What does our resolution do? Our resolution is filed pursuant to the War Powers Act. The War Powers Act was passed at the tail end of the Vietnam war. Senator DURBIN did a good job yesterday of sort of going into the history of the passage of the War Powers Act. The War Powers Act was trying to do two things. In the aftermath of the Vietnam war, they were analyzing what had gone wrong during it. There were a number of points along the way where the President did not keep Congress informed. There was a bombing campaign that started in Laos, for example, during the Vietnam war, about which Congress wasn't informed, and there were activities in Cambodia about which Congress wasn't informed.

Then, the second thing we were trying to do was not just to require Presidents to inform Congress but also to give Congress the ability to have a debate and have a vote on the floor in case the President started hostilities without coming to Congress. The President should keep Congress informed and not hide the ball from Congress, and Congress needs a procedure to stop a war that is initiated by a President who doesn't come to Congress.

Here is the procedure under which we have filed our resolution. If a President

puts U.S. troops into hostilities without a congressional authorization—even if the President claims a legal right to do so—self-defense, article II power—but if the President puts U.S. troops into hostilities without a congressional authorization, any Member of Congress can file a resolution to remove the U.S. troops from hostilities and force a vote on that resolution within a prompt period of time. That is the resolution Senator DURBIN and I filed last Friday.

President Trump has engaged the United States in hostilities with Iran. People have different points of view about whether that is a good thing or bad thing, but now that there are battlefield casualties on both the U.S. and Iranian sides, it is clear that this provision of the statute has been met. We are engaged in hostilities with Iran. Not only are the United States and Iran engaged in hostilities that have inflicted casualties on the other side, but the President is essentially acknowledging that we are in hostilities because he is sending War Powers notices to Congress—one in November and one last Saturday—reporting on his actions and saying that the reports are consistent with the War Powers Act. He recognizes that hostilities are underway.

The current hostilities are not pursuant to a previously passed congressional authorization. The 2001 authorization for use of military force authorized military action against the perpetrators of the 9/11 attack. Iran was not a perpetrator of the 9/11 attack, and there is no argument that they are covered by that authorization. There was a separate authorization passed by Congress in 2002. That is the most recent one that has been passed. It authorized action to topple the Iraqi Government of Saddam Hussein. That government is long gone, and that authorization does not permit attacks on Iran or on the current Iraqi leadership, such as the individuals who were killed in the two sets of U.S. strikes. With these two threshold questions met, hostilities are underway as defined by the War Powers Act, and they are not subject to a previous congressional authorization.

We have now filed a resolution to get Congress to reassert its constitutional role. The resolution demands that U.S. forces be withdrawn from hostilities against Iran unless Congress affirmatively passes a declaration of war or authorization, or the United States needs to defend itself from an imminent attack.

If my resolution passes, Congress would still have the ability to pass an authorization, if it chose to, and the United States would still be able to defend itself against imminent attack, but the President could not act on his own to start a war with Iran except in those circumstances.

The resolution does not require that U.S. troops withdraw from the region. We are doing many things in the re-

gion. Thousands of Americans are there partaking in missions that increase the security of the United States and our allies. There is no requirement that we withdraw from the region. These missions include security cooperation with partner forces, fighting against elements of al-Qaida, ISIS, and the Taliban, and ensuring the safe passage of commercial vehicles through freedom of navigation operations. All those activities that are being conducted by the United States in the region can continue.

The resolution does not hold those forces into question or question their mission.

The only thing the resolution would accomplish, if passed, is to back the U.S. troops away from engagement and hostilities with Iran unless for imminent defense or pursuant to a separate authorization.

I would hope to have the support of all my colleagues on this resolution. Its passage would preserve the option of U.S. military action for self-defense. It would preserve the ability of Congress to declare war or pass a war authorization. It would only prohibit this President or any President from taking us to war on his own.

I heard one colleague say: “The last thing America needs is 535 Commanders in Chief.” I completely agree. Once Congress authorizes a war, it should be up to the Commander and the military leadership to wage that war and make the tactical decisions about how to fight it, but the question of whether we should be at war at all is one that is specifically left to Congress.

Let me finish by again focusing on our troops. So many members of the military were home for the holidays, enjoying time with their families, and then received surprise notices that they must redeploy to the Middle East yet again.

Imagine the cost of two decades of war on these troops and their families. Some of these folks have deployed over and over and over again. Imagine being at home at Christmas and receiving the notice you have to deploy yet again to the Middle East.

We are living in a challenging time. Many Americans know nothing but permanent war. We have been at war since 2001. There are Americans, including Americans in the military, that that has been their whole life. That is all they know. Yet, at the same time, many Americans know nothing about war. Because we have an all-volunteer service, many American families are completely untouched by the war. Only 1 percent of our adult population serves in the military.

We have an interesting dynamic that may be sort of unique to our history, whether we have been at war for 20 years and some only know permanent war, while many other American families know nothing about war because members of their families don't serve in the military.

We put war on a footing where it can go on forever, sort of like on “Executive autopilot” by Presidential order, and Congress, in my view—and, again, this is bipartisan—has hidden from its responsibilities.

At this moment of very grave danger, where both Americans and Iranians are losing their lives in hostilities, it is time for Congress to shoulder the burden of making the most important decision we will ever face. That is why I intend to bring this resolution to the floor of the Senate and ask my colleagues to debate and vote on it in the coming weeks.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### UNANIMOUS CONSENT REQUEST— S. CON. RES. 32

Mr. MARKEY. Madam President, Members of the Senate, I rise first to express my grave concern over President Trump's recent actions and words that have brought us to the brink of an unauthorized war with Iran.

Today I am introducing a resolution with Senator WARREN and Senators LEAHY and REED and BOOKER and WYDEN because, on Saturday, President Trump tweeted that his administration is targeting 52 sites, some of which are cultural sites treasured by the Iranian people.

My resolution is very simple. It says that attacks on cultural sites in Iran are war crimes. It is as straightforward as that.

The President would compound the mistake he has made and turn it into something that could be catastrophic for that region, for our country, for the world.

President Trump's repeated threats to add Iranian cultural sites to his military target list is a betrayal of American values. It is wrong. It is a needless escalation which ignores international law and the Defense Department's own policies. Attacking cultural sites is a violation of international law.

Article 53 of protocol 1 to the Geneva Conventions prohibits any act of hostility against cultural objects, including making cultural sites the target of reprisals.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which has been ratified by this body, also prohibits the attack or destruction of cultural sites.

Attacking cultural sites would also violate the Defense Department's own policies. The Department of Defense Law of War Manual states that cultural property, the areas immediately