

NYT: Op-Ed Contributor: Put War Powers Back Where They Belong (July 8, 2008),

By JAMES A. BAKER III and WARREN CHRISTOPHER

Their proposal would require the president to consult senior lawmakers before initiating combat expected to last longer than a week, except for covert operations or rare circumstances requiring emergency action, in which case consultation would have to be undertaken within three days.

Congress, for its part, would have 30 days to approve the military action or, if it declined to do so, could then order it ended by disapproving it.

The plan would create a new committee of Congressional leaders and relevant committee chairmen, with a full-time staff that would have access to military and intelligence material. The president would be required to consult with the group in advance of any major strike and regularly throughout any extended conflict.

The two former secretaries of state, [Warren Christopher](#) and [James A. Baker III](#) , oversaw a yearlong bipartisan study of the tension over war powers that has vexed the American government since its founding. In a report released on Tuesday, the study group concluded that the 1973 law, which is known as the War Powers Resolution and was adopted in the wake of American involvement in the Vietnam War, was lacking in a number of regards.

For one thing, the authors said, it allows the president to wage war without any Congressional consultation or approval for up to 90 days. It sets forth conditions under which a president can commit troops, including an unspecified “national emergency,” but provides no mechanism for Congress to enforce its provisions. It also requires the president to report periodically on the progress of any conflicts, a provision that has been regularly ignored.

Many scholars consider parts of the resolution unconstitutional, including the requirement that military action be ended within 90 days unless Congress specifically authorizes it.

Mr. Christopher, who served under President [Bill Clinton](#) , and Mr. Baker, under the first President Bush, said the 1973 act was “ineffective at best and unconstitutional at worst.”

“No president has recognized its constitutionality, and Congress has never pressed the issue,” Mr. Christopher said. “Nor has the [Supreme Court](#) ever ruled on its constitutionality.”

In an interview, Mr. Baker said: “It is not good for the rule of law to have the primary statute in this critical area to be routinely ignored. No president has complied with it, and reports filed to Congress under it just collect dust. People in Congress say it’s just a

charade.”

The new proposal is intended to clarify when and for how long presidents can act to wage a military operation.

The question has arisen repeatedly in the context of the Iraq war. In 2002, President Bush sought and received Congressional authorization for military action to enforce [United Nations](#) resolutions on Iraqi weapons. Since then, however, many members of Congress have claimed that he has exceeded that authority by changing the mission of the deployment and pouring in thousands of additional troops.

In 2007, several senators, including [Barack Obama](#) , now the likely Democratic presidential nominee, tried to repeal the 2002 war authorization. They fell short. Mr. Obama had no immediate comment Tuesday on the proposed legislation.

Senator [John McCain](#) , the likely Republican presidential nominee, would work cooperatively with Congress “as much as possible,” said his senior foreign policy adviser, Randy Scheunemann.

“The Baker-Christopher war powers proposal is an interesting approach to this enduring issue,” Mr. Scheunemann said. “As president, Senator McCain would make consultations with Congress a priority, especially in the issues of war and peace.”

A spokesman for the Senate majority leader, [Harry Reid](#) , Democrat of Nevada, said Mr. Reid took the proposal seriously and would work with other Senate leaders to consider possible legislation.

Two former House members, David Skaggs, Democrat of Colorado, and Mickey Edwards, Republican of Oklahoma, criticized the new proposal. Speaking as members of a war powers study committee formed by the nonpartisan Constitution Project, they said the Baker-Christopher group had tilted too far in favor of the executive branch.

Mr. Baker and Mr. Christopher led a 12-member commission of constitutional experts and former policy makers to study the war powers question, an effort conducted under the auspices of the Miller Center of Public Affairs at the [University of Virginia](#) .

The group included former Representative [Lee H. Hamilton](#) , co-chairman with Mr. Baker of the Iraq Study Group, whose 2006 recommendations for a gradual withdrawal from Iraq were largely ignored by President Bush. Among other members of the panel were [Brent Scowcroft](#) , a retired [Air Force](#) general who was national security adviser to President [Gerald R. Ford](#) and the first President Bush; John O. Marsh Jr., secretary of the Army under President [Ronald Reagan](#) ; Edwin Meese III, attorney general under Reagan; and [Strobe Talbott](#) , deputy secretary of state in the Clinton administration.

Mr. Hamilton, an Indiana Democrat who was also vice chairman of the panel that

investigated the Sept. 11 terror attacks, said the new proposal would not resolve all the conflicts between the executive and legislative branches on matters of war.

“It’s fundamentally quite a modest proposal, modest but important,” Mr. Hamilton said. “Presidents will do what they want to do, and they have the constitutional power to do it. What we hoped to ensure is that they hear other points of view before they do.”