High-level panel urges new law to regulate how US goes to war

David Walsh
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A blue-ribbon panel of former American government officials, politicians, military commanders and academics has come up with a proposal for a new mechanism by which the United States could go to war, aimed largely at applying a veneer of 'national unity' to the process.

The National War Powers Commission, co-chaired by former secretaries of state James A. Baker, who served under George H. W. Bush, and Warren Christopher (in the Clinton administration), issued its study Tuesday, urging the passage in 2009 of a new "War Powers Consultation Act."

A glance at the crowd of tried and true US state functionaries, abetted by a few historians and university officials, assembled for the task would be enough to convince an observer that this body was up to no good.

The bipartisan nature of the panel is not in doubt. Indeed, the commission's co-chairmen last "worked together" (to use the phrase of the *Los Angeles Times*) when they led opposing camps during the 2000 presidential election recount in Florida, with Baker representing Republican George W. Bush and Christopher Democrat Al Gore.

Not only is the 2000 election controversy reprised in the panel's personnel, so too is the Iraq Study Group (known as the Baker-Hamilton group), whose recommendations on a tactical shift in Iraq war policy were largely ignored by the Bush administration in 2006. In addition to Baker, the other co-chairman of that group, former Representative Lee Hamilton (Democrat of Indiana), is also a member of the war powers commission.

Other familiar figures include Brent Scowcroft, former Air Force general and National Security Advisor to presidents Gerald Ford and the first George Bush; Strobe Talbott, Deputy Secretary of State under Bill Clinton; Edwin Meese, Attorney General under Ronald Reagan and a ferocious enemy of democratic rights (also a member of the Iraq Study Group); Carla Hills, US Trade Representative in the first Bush administration; and Slade Gorton, former Republican senator from Washington (and a member of the 9/11 Commission).

The armed forces are represented by John O. Marsh, Jr., former Secretary of the Army under Reagan and J. Paul Reason, Commander in Chief of the US Atlantic Fleet from 1996 to 1999. Historian and author Doris Kearns Goodwin, a regular on the television talk-show circuit, serves as the commission's historical advisor.

This incestuous group, composed mostly of Washington insiders, was brought together to propose changes to existing procedures in response to the crisis provoked by the Bush administration's nakedly illegal invasion and occupation of Iraq, which has helped discredit the presidency and Congress.

The commission takes as its starting point the failure of the existing procedure, embodied in the War Powers Resolution of 1973, passed over President Richard Nixon's veto in the midst of mass opposition to the Vietnam War.

The 1973 statute says that the president may exercise his powers as commander in chief "only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by an attack upon the United States." The authors of the panel's report note that "Since the enactment of the Resolution, Presidents have sent troops into conflict on several occasions when none of these circumstances were present: including Grenada, Yugoslavia, and Haiti."

In fact, one of the more revealing features of the commission's study is its brief discussion of the series of interventions made by American imperialism since the early 1970s. The panel takes for granted Washington's right to intervene, overthrow governments and carry out whatever measures are deemed necessary for the defense of American "national interests."

The 1973 resolution further provides that Congress may compel the president to remove troops "merely by passing a concurrent resolution." It has never done so, but the war powers panel argues that such a measure would be unconstitutional. The measure also states that if Congress has not approved a new military campaign within 60 to 90 days (depending on the circumstances), the president must halt that campaign. No president has ever paid attention to this legal obligation.

The report points out that "Congress as a whole has never sought to compel the President to comply with the War Powers Resolution of 1973" and worries that "Perhaps the greatest problem with the Resolution is that the rule of law is undermined when the country's centerpiece statute in this vital area of American law is regularly and openly ignored. This breeds cynicism and distrust among citizens toward their government."

In other words, the open flouting of the existing procedures by successive presidents, who launch or escalate wars at will, serves to weaken popular support for US military adventures and generally deepen public antipathy for the existing system.

The remedy for all this, according to the commission, is greater consultation, or the appearance of greater consultation, between the president and Congress.

The report sidesteps the constitutional questions involved in the war powers question, or perhaps more accurately, sidesteps a confrontation with those elements in the Bush administration who seek to turn the American government into a presidential dictatorship.

The US Constitution is quite clear. Article 1, Section 8 provides that "Congress shall have the power ... to declare war." The report's authors observe that proponents of congressional authority "say that by vesting Congress with the power to declare war, the framers [of the Constitution] stripped the Executive of the powers the English king enjoyed. They say the framers placed the powers to decide to go to war in the hands of Congress because it is the branch most deliberate by design, most in touch with the American people, and thus least inclined to commit soldiers to the battlefield."

Turning to the tortured reasoning of the "proponents of presidential authority," no doubt with authoritarian elements such as Vice President Dick Cheney and others in mind, the report notes that, according to their argument, congressional power "to 'declare' war ... does not include the power to decide whether to go to war. Instead, it merely provides

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Congress the power to recognize that a state of war exists. These advocates argue that the President need not seek or obtain congressional approval before committing the country to military campaigns. Although it may be politically expedient for the President to obtain such popular support, they argue that the Constitution does not require it."

The war powers commission seeks to persuade the advocates of unlimited executive power that some degree of cooperation between the White House and the legislative branch is essential for the success of US foreign policy operations. The authors of the report explain that "we believe that our country is best served ... when the two branches work together to protect our nation's security.

"Given the profound consequences of the decision to take the nation to war, there will, almost inevitably, be disagreement when the two branches consult. But disagreement and substantive debate, as history shows, often breed better decisions and *more lasting popular support*." [Emphasis added]

The study returns to this issue of public support for a given war effort on a number of occasions, with the present unpopularity of the Iraq war, and the historical example of Vietnam, clearly in mind. The commissioners are advising the political establishment as to how it should get its procedural house in order before the next, inevitable war.

While explaining how their proposed new law would overcome the shortcomings of the existing statute, they argue, for example: "The President has a responsibility to defend the country and its security interests. But as Gallup Polls show, Americans strongly favor congressional involvement in decisions to go to war. This desire is, notably, not of recent vintage. At the time of the passage of the War Powers Resolution, 80 percent of those polled said Congress should be significantly involved in decisions to go to war. Similar polls, including recent ones, indicate that for some seven decades Americans have wanted Congress involved in decisions to go to war."

And further: "When congressional consultation and support are obtained during times of war, our country can most effectively execute a unified response to hostilities. ... The more the President and Congress work together to confront these threats, the more likely it is that the country can avoid political and constitutional controversies and also devise the best strategies for defending against those threats."

The solutions the commission comes up with are principally aimed at providing the semblance of congressional participation in the decision to go to war, while not seriously infringing on what the Bush White House in particular has claimed as its constitutional prerogatives.

Thus, Section 2 of the proposed War Powers Consultation Act states that the new measure "is not meant to define, circumscribe, or enhance the constitutional war powers of either the Executive or Legislative Branches of government, and neither branch by supporting or complying with this Act shall in any way limit or prejudice its right or ability to assert its constitutional war powers or its right or ability to question or challenge the constitutional war powers of the other branch."

The act largely removes congressional authority granted by the 1973 resolution and merely calls for the president to consult with a congressional super-committee when he or she is contemplating a "significant armed conflict."

The president, however, is not obligated to consult with Congress in the event of "minor hostilities, emergency defensive actions, or law enforcement activities"; nor in regard to actions taken by the president "to repel attacks, or to prevent imminent attacks"; nor "limited acts of reprisal against terrorism or states that sponsor terrorism," "humanitarian missions," "investigations or acts to prevent criminal activity abroad," "covert operations," "training exercises" or "missions to protect or rescue American citizens or military or diplomatic personnel abroad."

Virtually all of American imperialism's interventions over the past several decades, or more, have been justified on one or more of these grounds. There is nothing here that would stop any White House, Republican or Democratic, from justifying new wars of aggression as "limited" acts of "self-defense" against "terrorism" or the threat of "imminent attack."

The consultation procedure with congress is toothless, in any case. The new law would provide that before ordering the deployment of US armed forces into a significant conflict, the president must consult with a "Joint Congressional Consultation Committee," composed of House and Senate leaders from both parties and the chairmen and ranking members of the most powerful committees (Foreign Affairs, Armed Services, Intelligence, etc.). However, "The President need not obtain the consent of Congress to order such a deployment, but consultation is required."

If Congress has not previously authorized a military intervention, according to the provisions of the proposed measure, it must vote on a resolution of approval within 30 days of such an intervention commencing. If either House of Congress defeats the measure, a senator or representative may file a resolution of disapproval, which would have to be passed by both Houses and signed by the president, or approved by Congress over the president's veto.

Given the political and military realities, the possibility of such a resolution every being passed, or acted upon, is utterly remote. In effect, the president is being granted new powers to launch and conduct a war, while Congress is being signed on as a powerless extra, whose participation is meant only for duping the population. There is not a shred here of concern for constitutional guarantees or elementary democratic rights.

The commission's report is clearly aimed at preparing for the handing over of power - and the two intractable wars and occupations begun by the Bush administration - to a new president in January 2009. More importantly, it is aimed at laying the institutional foundations for the launching of the new and potentially far greater wars that those who today pass for US imperialism's "wise men" see as inevitable.

The central thrust of their concern is evident. They see a serious danger that the bitter internecine disputes that opened up within the political establishment over Bush's "war of choice" and subsequent debacle in Iraq could become even more fractious in a future conflict. Under those conditions, the disputes within the ruling elite could create a political crisis into which masses of working people opposed to war could intervene decisively. The attempt to create a fig leaf of legality and national unity for American militarism is a desperate attempt to stave off such a threat.

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