104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 104–642
Part 1

UNITED STATES ARMED FORCES PROTECTION ACT OF 1996

R E P O R T

OF THE

COMMITTEE ON NATIONAL SECURITY HOUSE OF REPRESENTATIVES

ON

H.R. 3308

together with

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

JUNE 27, 1996.—Ordered to be printed

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104TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPT. 104–642 Part 1

UNITED STATES ARMED FORCES PROTECTION ACT OF 1996

JUNE 27, 1996.—Ordered to be printed

Mr. SPENCE, from the Committee on National Security, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3308]

[Including cost estimate of the Congressional Budget Office]

The Committee on National Security, to whom was referred the bill (H.R. 3308) to amend title 10, United States Code, to limit the placement of United States forces under United Nations operational or tactical control, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND BACKGROUND

The committee has closely monitored with concern the Administration's embrace of multinational peacekeeping as a principal instrument of U.S. national security policy. While the committee recognizes the value and need for U.S. participation in multinational peacekeeping operations under limited circumstances, it is also very aware of the risks and challenges associated with the commitment of American combat forces to such frequently volatile operations. The committee, therefore, questions the merit of incurring such risks when U.S. forces are deployed as peacekeepers to areas of peripheral or no national security interest to the United States.

Therefore, the committee continues to review the implementation of the Administration's peacekeeping policy established by Presidential Decision Directive 25 (PDD–25), signed by President Clinton in May 1994. In particular, the committee has serious and specific concerns with the policy decision contained in PDD–25 to

29–006

allow the placement of U.S. forces under the operational control of United Nations commanders. This decision raises serious concerns about the safety and welfare of U.S. forces participating in United Nations peacekeeping operations under the control of foreign commanders of undetermined training, competence and political accountability. While PDD–25 contains measures intended to mitigate the potential risks associated with the ceding of control over U.S. forces, the committee believes that it fails to reflect adequately the policy objective that resorting to such command and control arrangements for U.S. forces should be the exception rather than the norm and occur only in operations involving clear U.S. national security interests. The committee is particularly concerned over the participation of U.S. combat forces in United Nations peace enforcement operations and believes that U.S. forces should only be placed under foreign operational control in such operations under the most extraordinary circumstances. Accordingly, the committee has pursued a number of legislative remedies over the past several years to establish appropriate guidelines and limitations on when U.S. forces can be subordinated to the control of United Nations foreign commanders.

In response, the Administration has stressed that the President will retain "command" of U.S. forces at all times. However, the term "command" in this context refers solely to the administrative control of U.S. military forces which has never been an issue of debate or contention. On the other hand, the practice of ceding "operational control" of U.S. military forces to non-U.S. commanders remains a highly controversial and troubling policy.

While certain U.S. military units have operated under the operational control of other nations, these instances have been rare and usually occur as part of larger coalition military operations where the U.S. retains overall operational command of the theater of operation. Further, these instances occurred during traditional military operations that allowed a high degree of planning and coordination to minimize the inherent complications resulting from mixed command chains.

By contrast, the concept of ceding operational control of U.S. forces to a United Nations peacekeeping command is a relatively recent practice that has thus far yielded decidedly mixed results. As demonstrated during the UNOSOM II operation in Somalia, peacekeeping operations place a high premium on the ability to rapidly employ effective military force in response to unplanned circumstances. The tactical demands of such operations tend to stress and exacerbate the limitations of mixed-nationality operations resulting from the usually significant cultural, language, doctrine, and training differences among the participating national contingents. While only U.S. logistics forces were placed under United Nations operational control during UNOSOM II, under a Turkish United Nations commander, the unanimous view of U.S. commanders interviewed by the committee during its review of the Somalia operations was that United Nations mixed-nationality command chains are inappropriate for demanding United Nations operations.

The committee is aware that the Administration has expressed concern over the constitutional implications of the proposed legislation. However, the committee recognizes that the Constitution is si-

lent on the issue of delegation of command to foreign authorities and, therefore, leaves the issue to congressional direction. At the request of the committee, the American Law Division of the Congressional Research Service (CRS) conducted a review of this question and determined that the bill is: "within Congress' constitutional authority." The CRS analysis states, "in prohibiting the use of DOD funds for any element of the armed forces placed under the United Nations operational or tactical control except in specified circumstances, [the bill] appears to be a permissible exercise of Congress' power over spending" as provided by Article I, section 9 of the constitution. The analysis further states, "the draft bill can be justified as an exercise of Congress' war power. The Constitution in Article I, section 8, divides the war power between the Congress and the President * * * Where the powers of the Congress and the Executive begin and end in this scheme has proven to be one of the most persistently debated constitutional questions. But Congress clearly has the power to determine when and under what circumstances U.S. armed forces will participate in military operations abroad, whether conducted directly by the U.S. or in cooperation with other nations." Moreover, the analysis concludes that "The draft bill does limit any unilateral and independent authority the President might claim to commit U.S. forces to operational or tactical control. But that limitation appears well within Congress' power."

LEGISLATIVE HISTORY

H.R. 3308, the United States Armed Forces Protection Act of 1996, was introduced on April 24, 1996. It was referred to the Committee on National Security and the Committee on International Relations.

The origins of this legislation can be traced back to H.R. 7, the National Security Revitalization Act which passed the House on February 16, 1995. H.R. 3308 consists of provisions that are nearly identical to section 1301 of the Conference Report on H.R. 1530, The National Defense Authorization Act for Fiscal Year 1996, which passed the House on December 15, 1995 and was vetoed by President Clinton on December 28, 1995.

Although the Committee on National Security did not hold any hearings specifically on H.R. 3308, hearings were held this year on issues that are related to the subject of H.R. 3308—the deployment of U.S. forces for participation in military operations conducted under the auspices of the United Nations. In addition, the committee held hearings in 1995 on the subject of the United Nation's command and control of United States military forces as part of the committee's consideration of H.R. 7, the National Security Revitalization Act. This bill is still awaiting action in the Senate.

On May 1, 1996, the Committee on National Security met to consider H.R. 3308. The bill was ordered reported favorably to the House without amendment by a rollcall vote of 47–1.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section would entitle the Act as the "United States Armed Forces Protection Act of 1996".

Section 2—Findings and congressional policy

This section would establish a number of congressional findings and policy statements relating to the U.S. participation in United Nations peacekeeping operations and the placement of U.S. armed forces under the operational control of United Nations foreign commanders.

Section 3—Placement of United States Forces under United Nations operational or tactical control

This section would establish limitations on the placement of U.S. troops under United Nations operational or tactical control. It would prohibit the obligation or expenditure of Department of Defense funds for U.S. armed forces placed under United Nations operational or tactical control, unless the Congress authorizes such placement or unless the President certifies to the Congress, not less than 15 days before the date on which such United Nations operational or tactical control is to become effective that it is in the national security interests of the United States to place such elements of the armed forces under United Nations operational or tactical control. The section would also require the President, as a condition to proceeding with the placement of U.S. forces under United Nations operational or tactical control, to provide Congress with a report detailing the following:

(1) the national security interests that would be advanced by the placement of U.S. forces under United Nations operational or tactical control;

(2) the mission of the U.S. forces involved;

(3) the expected size and composition of the U.S. forces involved;

(4) the precise command and control arrangements between the U.S. forces and the United –Nations, and between the U.S. forces and the regional U.S. commander;

(5) the extent to which the effected U.S. forces will depend on foreign forces for security;

(6) the extent to which U.S. commanders under United Nations foreign command will retain the right to report independently to U.S. authorities and to refuse orders they deem illegal;

(7) the extent to which the U.S. will retain the right to withdraw its forces;

(8) the exit strategy;

(9) the extent to which U.S. forces will be required to wear United Nations insignia; and

(10) the anticipated monthly cost to the U.S. of the proposed operation.

The section would also exempt application of the limitation to U.S. armed forces in the United Nations Protection Force (UNPROFOR) involved in ongoing operations in Macedonia and Croatia.

The committee wishes to make clear that none of the provisions in this section are intended to reflect an endorsement or authorization of Operation Able Sentry in Macedonia or the manner in which the President authorized such deployment. Further, the committee further clarifies that none of the provisions of this section supersede, negate or otherwise affect the operative requirements of the United Nations Participation Act of 1945, section 287 of title 22, United States Code.

Section 4—Requirement to ensure that all members know mission and chain of command

This section would require commanders to inform each member of their unit of the unit's mission in an operation and of that member's chain of command.

COMMUNICATION FROM OTHER COMMITTEE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC, May 1, 1996.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I write with regard to H.R. 3308, the United States Armed Forces Protection Act of 1996. This bill was introduced on April 23, 1996, and was referred to the Committee on National Security, and in addition, the Committee on International Relations. I understand the Committee on National Security intends to mark up H.R. 3308 on Wednesday, May 1.

The purpose of this bill is to limit the placement of U.S. forces under United Nations operational or tactical control. This legislation expresses the view that, in view of the complexity of United Nations peacekeeping operations and the difficulty in achieving unity of command and expeditious decision making, the U.S. should participate in such operations only when it is clearly in the national security interest to do so and that, except in the most extraordinary circumstances, none of the U.S. Armed Forces of the U.S. should be under the operational control of foreign nationals in United Nations peace enforcement operations.

The Committee on International Relations has closely reviewed H.R. 3308, and finds that the Committee approved a similar provision as part of its consideration of H.R. 7 earlier in this Congress. Accordingly, in order to expedite consideration of this measure in the House, the committee waives its right to take up the bill. I therefore ask that the committee be discharged from further consideration.

The Committee on International Relations wishes to make clear that the foregoing waiver should not be construed as a waiver of the committee's jurisdiction with respect to any of the legislative provisions in H.R. 3308 that fall within its jurisdiction. The committee also wishes to preserve its prerogatives with respect to any House-Senate conference on this bill and any Senate amendments thereto, including the appointment of an equal number of conferees to those appointed for any other House committee with respect to

the provisions of H.R. 3308 which fall within this committee's jurisdiction.

Thank you for your attention to this matter, and I look forward to strongly supporting H.R. 3308 on the House floor.

With best wishes,

BENJAMIN A. GILMAN, *Chairman.*

COMMITTEE POSITION

On May 1, 1996, the Committee on National Security, a quorum being present, approved H.R. 3308, as amended, by a vote of 47 to 1.

FISCAL DATA

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlays resulting from the bill during fiscal year 1997 and the four following fiscal years. The results of such efforts are reflected in the cost estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974, which is included in this report pursuant to clause 2(l)(3)(C) of House rule XI.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 403(a) of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 10, 1996.

Hon. FLOYD SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3308, the United States Armed Forces Protection Act of 1996, as ordered reported by the House Committee on National Security on May 1, 1996. H.R. 3308 would prohibit U.S. forces from being placed under operational or tactical control of the United Nations (U.N.) unless the President makes certain certifications. The bill would have no significant budgetary impact because the U.N. reimburses the Department of Defense for most incremental costs of U.S. participation in U.N. operations.

H.R. 3308 contains no intergovernmental or private-sector mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeannette Van Winkle.

Sincerely,

JUNE E. O'NEILL, *Director.*

COMMITTEE COST ESTIMATE

Pursuant to clause 7(a) of rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

INFLATION-IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee concludes that the bill would have no significant inflationary impact.

OVERSIGHT FINDINGS

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, this legislation results from hearings and other oversight activities conducted by the committee pursuant to clause 2(b)(1) of rule X.

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures. The fiscal features of this legislation are addressed in the estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Reform and Oversight pertaining to the subject matter of H.R. 3308.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

ROLLCALL VOTE

In accordance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, a roll call vote was taken with respect to the committee's consideration of H.R. 3308. The record of this vote is attached to this report.

The committee ordered H.R. 3308 reported to the House with a favorable recommendation by a vote of 47–1, a quorum being present.

COMMITTEE ON NATIONAL SECURITY
104TH CONGRESS
ROLL CALL

Final Passage of HR 3308 **Date: 05/01/96**

Voice Vote **Ayes** **Nays**

Rep.	Aye	Nay	Present	Rep.	Aye	Nay	Present
Mr. Spence	X			Mr. Dellums	X		
Mr. Stump	X			Mr. Montgomery	X		
Mr. Hunter	X			Mrs. Schroeder	X		
Mr. Kasich				Mr. Skelton	X		
Mr. Bateman	X			Mr. Sisisky	X		
Mr. Hansen	X			Mr. Spratt	X		
Mr. Weldon	X			Mr. Ortiz	X		
Mr. Doman	X			Mr. Pickett	X		
Mr. Hefley	X			Mr. Evans	X		
Mr. Saxton	X			Mr. Tanner	X		
Mr. Cunningham	X			Mr. Browder	X		
Mr. Buyer	X			Mr. Taylor	X		
Mr. Torkildsen	X			Mr. Abercrombie	X		
Mrs. Fowler	X			Mr. Edwards	X		
Mr. McHugh	X			Mr. Tejeda	X		
Mr. Talent	X			Mr. Meehan			
Mr. Everett	X			Mr. Underwood			
Mr. Bartlett		X		Ms. Harman	X		
Mr. McKeon	X			Mr. McHale	X		
Mr. Lewis				Mr. Geren	X		
Mr. Watts	X			Mr. Peterson	X		
Mr. Thornberry	X			Mr. Jefferson			
Mr. Hostettler	X			Ms. DeLauro	X		
Mr. Chambliss	X			Mr. Ward	X		
Mr. Hilleary				Mr. Kennedy	X		
Mr. Scarborough							
Mr. Jones	X						
Mr. Longley	X						
Mr. Tiahrt	X						
Mr. Hastings	X						

Roll Call Vote Total **47 Aye** **1 Nay** **Present**

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

Subtitle A—General Military Law

* * * * * * *

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.
401. Humanitarian and civic assistance provided in conjunction with military operations.

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405. Placement of United States forces under United Nations operational or tactical control: limitation.

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§ 405. Placement of United States forces under United Nations operational or tactical control: limitation

(a) LIMITATION.—Except as provided in subsections (b) and (c), funds appropriated or otherwise made available for the Department of Defense may not be obligated or expended for activities of any element of the armed forces that after the date of the enactment of this section is placed under United Nations operational or tactical control, as defined in subsection (f).

(b) EXCEPTION FOR PRESIDENTIAL CERTIFICATION.—(1) Subsection (a) shall not apply in the case of a proposed placement of an element of the armed forces under United Nations operational or tactical control if the President, not less than 15 days before the date on which such United Nations operational or tactical control is to become effective (or as provided in paragraph (2)), meets the requirements of subsection (d).

(2) If the President certifies to Congress that an emergency exists that precludes the President from meeting the requirements of subsection (d) 15 days before placing an element of the armed forces under United Nations operational or tactical control, the President may place such forces under such operational or tactical control and meet the requirements of subsection (d) in a timely manner, but in no event later than 48 hours after such operational or tactical control becomes effective.

(c) ADDITIONAL EXCEPTIONS.—(1) Subsection (a) shall not apply in the case of a proposed placement of any element of the armed forces under United Nations operational or tactical control if Congress specifically authorizes by law that particular placement of

United States forces under United Nations operational or tactical control.

(2) Subsection (a) shall not apply in the case of a proposed placement of any element of the armed forces in an operation conducted by the North Atlantic Treaty Organization.

(d) PRESIDENTIAL CERTIFICATIONS.—The requirements referred to in subsection (b)(1) are that the President submit to Congress the following:

(1) Certification by the President that it is in the national security interests of the United States to place any element of the armed forces under United Nations operational or tactical control.

(2) A report setting forth the following:

(A) A description of the national security interests that would be advanced by the placement of United States forces under United Nations operation or tactical control.

(B) The mission of the United States forces involved.

(C) The expected size and composition of the United States forces involved.

(D) The precise command and control relationship between the United States forces involved and the United Nations command structure.

(E) The precise command and control relationship between the United States forces involved and the commander of the United States unified command for the region in which those United States forces are to operate.

(F) The extent to which the United States forces involved will rely on forces of other countries for security and defense and an assessment of the capability of those other forces to provide adequate security to the United States forces involved.

(G) The exit strategy for complete withdrawal of the United States forces involved.

(H) The extent to which the commander of any unit of the armed forces proposed for placement under United Nations operational or tactical control will at all times retain the right—

(i) to report independently to superior United States military authorities; and

(ii) to decline to comply with orders judged by the commander to be illegal or beyond the mandate of the mission to which the United States agreed with the United Nations, until such time as that commander receives direction from superior United States military authorities with respect to the orders that the commander has declined to comply with.

(I) The extent to which the United States will retain the authority to withdraw any element of the armed forces from the proposed operation at any time and to take any action it considers necessary to protect those forces if they are engaged.

(J) The extent to which United States forces involved will be required to wear as part of their uniform any badge,

symbol, helmet, headgear, or other visible indicia or insignia that indicates affiliation to or with the United Nations.

(K) The anticipated monthly incremental cost to the United States of participation in the United Nations operation by the United States forces which are proposed to be placed under United Nations operational or tactical control.

(e) CLASSIFICATION OF REPORT.—A report under subsection (d) shall be submitted in unclassified form and, if necessary, in classified form.

(f) UNITED NATIONS OPERATIONAL OR TACTICAL CONTROL.—For purposes of this section, an element of the Armed Forces shall be considered to be placed under United Nations operational or tactical control if—

(1) that element is under the operational or tactical control of an individual acting on behalf of the United Nations for the purpose of international peacekeeping, peacemaking, peace-enforcing, or similar activity that is authorized by the Security Council under chapter VI or VII of the Charter of the United Nations; and

(2) the senior military commander of the United Nations force or operation is a foreign national or is a citizen of the United States who is not a United States military officer serving on active duty.

(g) INTERPRETATION.—Nothing in this section may be construed—

(1) as authority for the President to use any element of the armed forces in any operation; and

(2) as authority for the President to place any element of the armed forces under the command or operational control of a foreign national.

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PART II—PERSONNEL

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CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.

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656. Members required to be informed of mission and chain of command.

* * * * * * *

§ 656. Members required to be informed of mission and chain of command

The commander of any unit of the armed forces assigned to an operation shall ensure that each member of such unit is fully informed of that unit's mission as part of such operation and of that member's chain of command.

ADDITIONAL VIEWS OF RONALD V. DELLUMS

Obviously, the Congress must be concerned about the circumstances under which U.S. military forces will be deployed, and that includes the command relationships under which they will serve. As I noted during the committee's consideration of H.R. 3308, my vote in favor of reporting the bill to the Floor was not because I support the substantive provisions of the bill but because I believed that the debate in the committee during formal mark up would not contribute to a better understanding of this complicated issue. I felt, therefore, that what debate was going to occur should take place on the Floor, when members had had time to formulate their views more completely and perhaps even to offer an alternative to achieve the goal of ensuring that command relationships best protect our personnel and interests.

Before expressing my reservations with the substantive provisions of the committee's recommendation, let me lay out two procedural concerns with the bill that the committee has reported.

First, it bears noting that the committee has not held a substantial hearing on this issue in subcommittee or in full committee. This is quite regrettable and should easily have been avoided.

During its consideration of H.R. 7 the committee only briefly touched upon this issue and, then, not dispositively. Other issues were dealt with in greater detail at the one hearing the committee held, at which Secretary of Defense William J. Perry and Joint Chiefs of Staff Chairman General John Shalikashvili discussed many issues, including missile defenses and NATO expansion most prominently.

In addition, the committee hearing this year on whether or not U.S. forces should be made part of the NATO-led IFOR in Bosnia may be related to this issue, but the committee again did not focus on the discrete issue of command and control of U.S. forces. It is instructive to note that the NATO command structure established for IFOR would be exempted from the restrictions established by H.R. 3308, mirroring the similar exemption in H.R. 7. Thus the foreign command and control issue was largely a moot point in our Bosnia-related hearing this year.

Despite this lack of any sustained committee inquiry, this is the third time that the House will be presented with this issue of command and control within the space of approximately one year. Prior to none of those occasions has there been any serious work up of the nuance and subtlety of this complicated constitutional issue can be addressed properly. For example, we have not sought expert testimony on the relative powers of the two political Branches, despite the ready availability of such experts holding a wide variety of viewpoints on the conflict between the congressional war power and the President's role of commander in chief.

These are large and important constitutional issues and they are deserving of the full illumination that is possible when the legislative process works as it was designed and intended. The formal mark up process would not have allowed for an effective debate of these issues; and it is unfortunate that our Floor debate will not be informed by a hearing record that would have enhanced our deliberation of this issue.

My second procedural concern is that, given this unfortunate state of affairs, one is left to wonder why, after having twice adopted this language, we are recommending that the House take up the matter again, and at a time when we have very pressing business on other matters. Clearly the passage of H.R. 7 last year did not make the section on command and control law, because H.R. 7 was a publicity exercise not an attempt to make law. But the majority attempted to correct that failure by embedding such a provision in the fiscal year 1996 defense authorization bill. The result was that the President vetoed that bill, in significant part because of his view that it unconstitutionally would restrict his ability to establish command and control relations, a power assigned in the Constitution to the President as the commander in chief of U.S. armed forces.

Clearly nothing has changed in the scant two months since the revised version of that bill became law (without the command and control provision) that would give us any reason other than to expect that a presidential veto awaits this free-standing section. Given this, the procedural shortcomings, and the fact that the apparent advent for again raising this contentious issue occurred beyond the committee, I am left to conclude that we proceed more for political than for policy reasons. This is not to say that reasonable people cannot disagree about the substance of this issue; they have been for over two hundred years.

Let me turn now to my substantive concerns, concerns which must be addressed during our debate and which must be successfully resolved before we can ever lay this issue to rest with success on the legislative front.

As I listened to the substantive debate in committee, I was impressed by the fact that most of my colleagues who argued in favor of the bill's provision did so because of their interpretation that Article I, Section 8 of the Constitution gives the power to the Congress to assert what command and control relations should be. Let me explore, in an effort to better inform the debate, what that part of our Constitution says and what a reasonable interpretation of the Article I "war power" might confer to the Congress.

Clause 11 of Section 8 confers upon the Congress the power "[t]o declare war, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." Clearly, this is the war powers that the Framers intended rest exclusively with the Congress. The Federalist Papers help to illuminate that the Framers were concerned that a single individual not commit the nation to war, but that the branch of government closest and most responsive to the people be charged with that responsibility. It does not speak to the operations of the military, and that is important as we will see later.

Clause 12 says that the Congress shall have the power "[t]o raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years." Clause 13 provides such a power for the Navy. The constitutional debates on these provisions show that the Framers intended to ensure that the Congress, and not the Executive, would decide whether or not the nation should establish a military force. By forcing a reevaluation of that decision every two years, the Framers sought to minimize the dangers that they perceived might befall a young republic from a standing military. Our experience of two hundred years of civilian control of the military so far have belied their concern. But it is relevant to note this section does not speak to command and control, and proponents of H.R. 3308 can find no support for the proposition that Congress has a role in dictating command and control relations.

Clause 14 does provide that the Congress shall have the power "[t]o make Rules for the Government and Regulation of the land and naval Forces." (Clauses 15 and 16 regard the Militia and are not relevant to this debate.) But this Clause does not connote that the Congress may take away the most basic and important moral responsibility of the Commander in Chief.

Article II of the Constitution, which enumerates the powers of the presidency, makes clear the limited scope of the congressional power set out in Article I, Section 8. It bears noting in this debate on command and control that the Constitution must be read as a whole document, including its Amendments, and that each power delegated to one Branch is prescribed, circumscribed and defined as well by the powers granted to another Branch.

Turning to Article II, one notes in Section 2 that "The President shall be the Commander in Chief of the Army and Navy of the United States, .* * *" Certainly such a placement of the command authority in the Executive Branch at least diminishes the powers of the Congress in regard to that aspect of our shared responsibility with the President over the "regulation" and "governance" of the armed forces. In seeking to understand what the Framers meant in balancing these responsibilities and powers, we also can turn to the debate at the time of the Constitution's drafting and ratification.

Again the Federalist Papers are illuminating, for they show that the Framers both considered this issue, and they disposed of it rather clearly. With as much fervor as they sought to ensure that a President could not carry our nation into war without the approval of the Congress, they held a view that Congress should not meddle in the direction and command of those forces. Consider the following observation from the Federalist Papers:

> The President of the United States is to be "commander-in-chief" * * * The propriety of this provision is so evident in itself and it is at the same time so consonant to the precedents of the State constitutions in general, that little need be said to explain or enforce it. * * * Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power

> of directing and employing the common strength forms a usual and essential part in the definition of the executive authority." (Federalist Paper No. 74, Hamilton)

Because operations other than war, such as peacekeeping, may degrade into conflict, it is certainly the case that the requirement for decisive command continues to apply to them. A single chain of command, established by the "first general and admiral" of the nation is the only proposition consistent with our Constitution's placement of the respective war powers of the Branches. Despite its other great recommendations, the legislative process does not commend itself well to accomplishing those objectives.

I have sought injunctive relief against several Presidents in order to preserve the war power of the Congress. I would do so again. But, I believe that a fair and complete reading of the Constitution cannot bring us to conclude that we have the power to prevent by legislation what the Constitution has granted the President, the ability to establish command relations. The fact that the Constitution may be "silent" on the question of foreign command in no way lessons the grant of power over all command decisions vested in the President.

The committee's significant reliance upon the conclusion reached by the Congressional Research Service's American Law Division that the "limitation [of the President's command authority] appears well within Congress' power" may be well intended, but it should only have been the beginning of a discussion, not its conclusion. This is clearly one of the matters of great constitutional debate and the argument over these interpretations is precisely what should have occurred in subcommittee (perhaps among several different committees of potential jurisdiction) but which, I fear, will not be fully consummated on the Floor.

Finally, I would like to address the important policy issues raised by the committee's report of H.R. 3308. I absolutely share the view that the Congress should concern itself to know that our men and women in uniform will be ordered to deploy only with the confidence that their command and operational control will maximize their safety and effectiveness. It is important to note in this context, that many examples exist of U.S. troops serving under foreign command and vice versa. Such arrangements will be as appropriate for peacekeeping as they have been in the past for war fighting. While the committee report aptly notes that the "tactical demands of [peacekeeping] operations tend to stress and exacerbate the limitations of mixed-nationality operations," I would submit that this is not necessarily more true than in coalition combat operations.

Moreover, the willingness to place U.S. forces under foreign operational control may prove vital to our ability to construct and maintain alliance relationships and to induce coalition efforts when circumstances warrant. Otherwise, the United States may be left with the Hobson's choice of going it alone or doing nothing when a crisis emerges, when circumstances might otherwise have allowed us to secure cooperative partnerships to promote stability and aid in deterring bloodshed and violence.

I believe that the President should consult with the Congress regarding any such arrangements, and should do so in advance of establishing them, whether in peacekeeping operations or in other

military actions. In this way, I believe that we can better have an opportunity to share our concerns with the President and the President will, in turn, be better able to exercise the commander-in-chief responsibilities. It may even be appropriate for the Congress to legislate such consultation. Such legislation would not impede the President's exercise of the commander-in-chief authority, but it will vindicate the Framers' intentions that in matters of war the political Branches should share the responsibilities in order to ensure that wisdom and caution would be the order of the day.

Such sharing can be done in an appropriate and constitutionally responsible way. Establishing such a mechanism is what the House should seek to do during the debate on H.R. 3308, which is why I and others who disagree with the contents of the bill as reported from committee nonetheless voted to report it to the Floor.

RONALD V. DELLUMS.

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