



APPENDIX TWO  
WAR POWERS CONSULTATION COMMITTEE  
PROPOSALS AT-A-GLANCE



*This document reflects due diligence done by the Commission's staff,  
but not necessarily the views of the Commission.*

This appendix summarizes various proposals to reform the War Powers Resolution of 1973, which emphasized the need for greater consultation between the President and Congress. Many of these proposals established specific congressional consultation groups with which the President would meet, as well as when and how these meetings would or should occur.

## LEGISLATIVE PROPOSALS

### *Jones - 2007*

**Date:** September 25, 2007

**Sponsor:** Rep. Walter B. Jones<sup>1</sup>

**Title:** H.J. Res. 53, “Constitutional War Powers Amendments of 2007”—*Statute to repeal and completely replace WPR*

**Membership:** Executive-Legislative Consultative Group

- Consultation required under “Constitutional War Powers Amendments of 2007” shall include “participation by:”
  - President and those senior executive branch officials designated by the President
  - Speaker, President pro tempore, Majority Leader and Minority Leader of the House and Senate

Total: 6 members, plus the President and additional executive branch officials

**Consultation:**

- President shall consult with Congress and must obtain a declaration of war or specific statutory authority before the “initiation of hostilities,” except in three emergency situations—an armed attack on the U.S., an armed attack on U.S. forces, or the evacuation of U.S. citizens.
  - In those emergency situations, the President shall consult with Congress “in every possible instance” before the initiation of hostilities.
  - Regardless, after initiating hostilities under one of the three emergency situations, the President must submit a detailed report to Congress within 48 hours.
- If Congress has not authorized the President’s use of force within 30 days, funding will automatically be cut off.

**Summary:** President shall consult with Congress and must obtain a declaration of war or specific statutory authority before the “initiation of hostilities,” except in three emergency situations. After initiating hostilities under one of the three enumerated emergency situations, Congress must authorize the president’s use of force within 30 days, or funding will automatically be cut off.

*DeFazio - 1999*

**Date:** March 24, 1999

**Sponsor:** Rep. Peter DeFazio<sup>2</sup>

**Title:** H.J. Res. 42, “War Powers Amendments of 1999”—*statutory amendments to WPR*

**Membership:** Executive-Legislative Consultative Group

- Consultation required under revised WPR includes “participation by:”
  - President and his designated senior executive branch officials
  - Members of House and Senate designated by Speaker and President pro tempore

Total: Number of members TBD

**Consultation:**

- President should consult with Congress “in every possible instance” before the use of force.
- “Consultation” under the WPR requires:
  - President to ask “Members of Congress” for advice before the decision is made to use force.
  - “All relevant information” be made available to Members of Congress.
- “Consultation” is not met “if the Congress is merely informed.”

**Summary:** President must ask Members of Congress for advice and opinions prior to the use of force, and those Members must include the members of a consultation committee.

*Hamilton - 1993*

**Date:** October 28, 1993

**Sponsor:** Rep. Lee Hamilton<sup>3</sup>

**Title:** Consultation Act of 1993 (H.R. 3405)—*statute to supplement existing WPR*

**Membership:** Standing Consultative Group (SCG), (to meet with President or senior national security officials)

Designated by Speaker / Majority Leader (after consultation with Minority Leader), to include majority and minority representatives of the House and Senate:

- Leadership
- Committees on Foreign Affairs / Relations
- Committees on Armed Services
- Select Committees on Intelligence
- Committees on Appropriations

Total: 20 Members

**Consultation:**

General Purpose

- SCG to facilitate improved interaction with the executive regarding the use of force.
- To the fullest extent practicable, consultation between the SCG and the President should occur before U.S. discussions with U.N. on the possible use of U.S. force abroad.

Regular Consultations

- SCG and President (or senior national security officials) “should meet regularly for discussions and consultations.”

Special Consultations

- SCG and President (or senior national security officials) “should also meet whenever United States military action abroad is being considered by the President and senior members of the administration.”

**Summary:** 20-Member committee to meet with the President or senior officials both regularly and before the use of force.

*Byrd-Warner - 1989*

**Date:** January 3, 1989

**Sponsors:** Senators Robert Byrd, George Mitchell, Sam Nunn, John Warner, David Boren, William Cohen, John Danforth<sup>4</sup>

**Title:** War Powers Resolution Amendments of 1989; (S. 2) (“Byrd-Warner”)—*statute to repeal Section 2(c) of the WPR, and to amend other aspects of the WPR*

**Membership:**

**Consultation Group in “Every Instance”**

In “every instance” of consultation under the WPR, the President shall consult with:

- Speaker of the House
- President pro tempore of the Senate
- Senate Majority, Minority Leaders
- House Majority, Minority Leaders

Total: 6 Members

**Permanent Consultative Group (PCG)**

When majority of 6 Members listed above so request, the President shall consult with a permanent consultative group, consisting of:

- 6 Members listed above
- Chairmen and ranking minority members of the following House and Senate Committees:
  - Foreign Affairs / Relations
  - Armed Services
  - Select Intelligence
- With each Congress, the Speaker and Senate Majority Leader will alternate positions of Chairman and Vice-Chairman

Total: 18 members

**Consultation:**

**Regular Meetings**

- President and 6 Members shall establish a schedule of “regular meetings.”
- In “every instance” of consultation under the WPR, the President shall consult with the 6 Members.

**Consultation with the PCG**

- President shall consult with PCG whenever a majority of the 6 Members so request
  - Unless the President determines that limiting consultation to 6 Members is “essential to meet extraordinary circumstances affecting the most vital security interests” of the U.S.

**PCG, acting alone**

- PCG shall meet “as may be necessary to carry out its responsibilities.”

**Summary:** 6-Member committee to meet with President a) regularly and b) in every instance where the WPR requires consultation; 18 Member committee to meet with President at request of 6-Member committee.

*Biden - 1988*

**Date:** December 1988

**Sponsor:** Senator Joseph Biden<sup>5</sup>

**Title:** “The Use of Force Act”—*statute to replace WPR*

**Membership:** Congressional Leadership Group (CLG)

- Speaker of the House (Chair)
- House Majority, Minority Leaders
- President pro tempore
- Senate Majority, Minority Leaders
- Chair and ranking members of House and Senate Committees on:
  - Foreign Affairs / Relations
  - Armed Services
  - Select Intelligence

Total: 18 members

**Consultation:**

**Regular Consultation**

- Monthly meetings to occur “as a regular practice, in open or closed session” when Congress is in session, between:
  - Sec. of State and Foreign Affairs / Relations;
  - Sec. of Defense and Armed Services;
  - DCI and Select Intelligence;
  - NSA and congressional leadership.
- Every three months, President meets with CLG.
- Purpose of consultation is to identify situations in which force might be necessary or to examine how use of force complies with statutory guidelines elsewhere in proposed Act.

**Summary:** 18-Member committee to meet with President every three months or on his own or committee’s initiative. Also, monthly meetings between Secretaries of State and Defense and Director of Central Intelligence and their corresponding congressional committees, and monthly meetings between congressional leadership and the National Security Advisor— all to identify when force may be used.

## SCHOLARLY PROPOSALS

### *Raven-Hansen “Weak Bill” Proposal – 1998*

**Date:** December 1998

**Proponent:** Peter Raven-Hansen<sup>6</sup>

**Title:** “Weak Bill” reform of WPR—*statute seeking to preserve much of the current WPR language*

**Membership:** Consultation Group (CG)

- Speaker of the House (Co-Chair)
- President pro tempore of Senate
- Senate Majority (Co-Chair), Minority Leaders
- House Majority, Minority Leaders
- Additional Members of Congress by unanimous designation

Total: 6 members (minimum)

#### **Consultation:**

##### **Prior Consultation Required**

- President to consult with CG before introducing armed forces into hostilities or where imminent hostilities are present:
  - Except when emergency does not permit time to do so,
  - Or when extraordinary circumstances require complete secrecy.

##### **Other Consultation**

- President to consult with CG at “regular intervals” after the introduction of armed forces into hostilities or where imminent hostilities are present.
- President must consult with CG at request of Co-Chairs or majority of CG until armed forces are removed from hostilities or hostilities are no longer imminent.

**Summary:** 6-Member committee to meet with President before he introduces armed forces into hostilities under the WPR absent emergency or extraordinary circumstances. President to consult with committee regularly or at request of the committee while armed forces are in hostilities or where hostilities are imminent.

*Raven-Hansen “Strong Bill” Proposal - 1998*

**Date:** December 1998

**Proponent:** Peter Raven-Hansen<sup>7</sup>

**Title:** “Strong Bill” reform of War Powers Resolution—*statute*

**Membership:** Consultation Group (CG)

- Speaker of the House (Co-Chair)
- President pro tempore of Senate
- Senate Majority (Co-Chair), Minority Leaders
- House Majority, Minority Leaders
- Additional Members of Congress by unanimous designation

Total: 6 members (minimum)

**Consultation:**

**Prior Consultation Required**

- President to consult with CG before each “use of armed forces abroad.”
- If prior notice not given because of national security emergency, President provides Congress statement of reasons for emergency.
- “Consult” means for the President to provide CG
  - Information material to the reaching a judgment concerning the advisability of the use of armed forces abroad.
  - Sufficient time before the use of armed forces for CG to consider information, reach a judgment, and, if appropriate, to refer to Committees of Congress or for CG member to submit legislation.
  - Opportunity for CG to communicate views to President.

**Continuing Consultation**

- President to consult with CG at “regular intervals” after the introduction of armed forces into hostilities or imminent hostilities.

**Regular Consultation**

- President and Secretary of State shall meet with CG “to facilitate consultation”
  - At regular intervals.
  - Whenever the Co-Chairmen or a majority of CG requests.

**Summary:** 6-Member committee to engage in detailed consultation with the President prior to each use of force, and to engage in regular consultation with the President both generally and while armed forces are subject to hostilities or imminent hostilities.

*Franck - 1989***Date:** 1989**Proponent:** Professor Thomas Franck<sup>9</sup>**Title:** No title—*suggested reform of WPR***Membership:** \* Follow the Byrd-Warner model

Total: 18 Members

**Consultation:**

- Follow the consultation model of Byrd-Warner.
- Provide staff for consultative group and empower it to issue subpoenas.

**Summary:** Supplement Byrd-Warner Proposal with staff and subpoena power for Permanent Consultative Group.*Vance - 1984***Date:** 1984**Proponent:** Former Secretary of State Cyrus Vance<sup>10</sup>**Title:** No title—*Amendment of WPR***Membership**

- Consultation with congressional leadership, including: Majority and Minority Leaders of Senate and House; Speaker of the House; Chairs and Ranking Members of Senate and House Armed Forces and Foreign Affairs/ Relations Committees

Total: 9 members

**Consultation:**

- Define “consultation” under WPR so that it requires the President to “discuss fully and seek the advice and counsel” of congressional leadership.
- Apply consultation to all actions listed of reportable events under current Section 4(a)(1) of WPR.
- “Regular and full” consultation between the President and congressional leadership.

**Summary:** 9-Member committee to consult with President both regularly and when consultation is required under WPR.

*Reveley - 1981***Date:** 1981**Proponent:** W. Taylor Reveley, III<sup>11</sup>**Title:** Joint Committee on Foreign and Military Affairs—*established pursuant to legislative rule***Membership:**

- To include both Senators and Representatives.
- Party caucuses would be responsible for membership

Total: Number of members TBD

**Consultation:**

- Committee should be given full authority to sponsor legislation.
- Committee should periodically state congressional view of foreign policy priorities, perhaps in response to an annual message from the President.
- Congress could grant crisis authority to such a committee so it could assemble to collaborate with the President quickly and quietly.

**Summary:** Joint House-Senate committee to offer congressional view on foreign and military policy, as well as to consult with the President quickly when necessary.*Federation of American Scientists - 1975***Date:** 1975**Proponent:** Federation of American Scientists (FAS)<sup>12</sup>**Title:** In conjunction with “no first use” of nuclear weapons campaign—*joint resolution***Membership:****Consultation Committee to consist of:**

- President pro tempore of the Senate
- Speaker of the House
- Senate Majority, Minority Leaders
- House Majority, Minority Leaders
- Chair and ranking members of Senate and House Committees on:
  - Armed Services
  - Foreign/International Relations
- [Chair and ranking member of the Joint Committee on Atomic Energy (now extinct).]

Total: 14 members

**Consultation:**

- The President shall not be the first to use nuclear weapons without consulting and receiving the assent of a majority of the committee.

**Summary:** 14-Member committee to consult with President before he would be the first to use nuclear weapons.

## FOOTNOTES

- 1 H.J. Res. 53, 110th Cong., 1st Sess. (2007) (sponsored by Representative Walter B. Jones).
- 2 H.J. Res. 42, 106th Cong., 1st Sess. (1999) (sponsored by Representative Peter DeFazio).
- 3 See H.R.3405, 103d Cong., 1st Sess. (1993) (sponsored by Representative Lee Hamilton).
- 4 See S. 2, 101st Cong., 1st Sess. (1989) (sponsored by Senator Robert Byrd).
- 5 Senator Joseph R. Biden, Jr. & John B. Ritch III, *The War Powers Resolution at Constitutional Impasse: A 'Joint Decision' Solution*, 77 Geo. L.J. 367 (1988).
- 6 Peter Raven-Hansen, *The War Powers Resolution: Origins, History, Criticism and Reform: Chapter 9: Legislative Reforms*, 2 J. Nat. Security L. 157 (1998).
- 7 *Id.*
- 8 *Id.*
- 9 Thomas M. Franck, *Rethinking War Powers: By Law or By "Thaumaturgic Invocation"?*, 83 Am. J. Int'l L. 766 (1989).
- 10 Cyrus E. Vance, *Striking the Balance: Congress and the President Under the War Powers Resolution*, 133 U. Pa. L. Rev. 79 (1984).
- 11 W. Taylor Reveley, *War Powers of the President And Congress: Who Holds the Arrows and Olive Branch?* 220-224 (1981).
- 12 *Id.* at 356 n.22.