

NDAA Member Day Testimony  
Congressman Brad Sherman  
May 3, 2021

Chairman Smith and Ranking Member Rogers, thank you for the opportunity to testify before you in favor of the inclusion of a few important provisions in the Fiscal Year 2022 National Defense Authorization Act (NDAA). I would like to bring to your attention these four provisions that I believe will enhance our national security.

First, I request that you include language explicitly prohibiting the use of any funds in contravention of the War Powers Resolution (WPR). I first proposed a War Powers amendment in 2011 to the Department of Defense Appropriations Act, which passed overwhelmingly. Such provisions have consistently been passed through the annual appropriations process since then.

The War Powers Resolution prevents the president from continuing hostilities undertaken in emergency or exigent circumstances without seeking and obtaining Congressional approval within certain time periods. Under the WPR, the president must obtain Congressional approval for hostilities he or she commences within 60 or 90 days. Certainly, if the President seeks to go beyond that period, he or she should do so only pursuant to statutory authorization prescribed by the War Powers Resolution or a declaration of war.

Unfortunately, since 1973, every president, Democrat and Republican, has claimed that the War Powers Resolution is not constitutional. They have either violated the Act or claimed that compliance was voluntary. Unfortunately, many constitutional scholars agreed with them.

Many constitutional scholars believe that Congress can make the War Powers Resolution binding on presidents, if - but only if - we tie it to the expenditure of funds. Former Republican Attorney General Michael Mukasey testified to that effect before the Foreign Affairs Committee on July 25, 2017.

Since 2012, Congress has used its authority over funds to prevent presidents from violating the War Powers Act—but, we've done so only with a series of temporary one-year provisions in

Appropriations bills. It is critical that, should the Commander-in-Chief decide that U.S. servicemen and women be put into harm's way, the President be forced to do so only in a manner that complies with the WPR. I urge you to make this prohibition a permanent part of U.S. law.

In addition, I request that you include language to prohibit making funds available for any use of military force in or against North Korea without the prior approval of Congress. The United States has approximately 28,500 members of the Armed Forces stationed in Korea, and over 100,000 United States citizens in total, all of whom would be placed in grave danger if an active military conflict on the Korean Peninsula were to erupt. The Fiscal Year (FY) 2020 National Defense Authorization Act included a sense of Congress that diplomacy is essential to ensure denuclearization. Sustained diplomacy with North Korea, alongside our partners and allies in the region, should be our focus to securing a lasting peace. As you prepare the Fiscal Year 2022 NDAA, I ask you to include the following language into the bill:

- *None of the funds authorized to be appropriated by this Act or otherwise made available to the Department of Defense for fiscal year 2022 may be obligated or expended for any use of military force in or against North Korea unless Congress has—*
  1. *declared war; or*
  2. *enacted specific statutory authorization for such use of military force after the date of the enactment of this Act that meets the requirements of the War Powers Resolution (50 U.S.C. 1541 et seq.).*

*Exception.—The prohibition under subsection (a) shall not apply to a use of military force that is consistent with section 2(c) of the War Powers Resolution.*

It must be Congress' objective to reclaim its constitutional authority over matters of war and peace on the Peninsula.

Furthermore, I urge you to include my provision concerning defense cooperation with India. The House Fiscal Year (FY) 2020 National Defense Authorization Act included a sense of Congress that the United States should strengthen and enhance its major defense partnership with India and

work towards designating India a major defense partner. My provision would expand NATO plus five to NATO plus six to include India.

U.S.-India security cooperation is expanding rapidly. Bilateral defense trade increased from near zero in 2008 to \$15 billion in 2019. These sales have included military transport aircraft, maritime patrol aircraft, and helicopters. We are also selling India military equipment that we haven't sold to any other non-NATO country. Today, India conducts more military exercises with the United States than any other country. India and the United States also conduct multilateral military exercises regularly with other countries as members of the Quad alliance. As such, India plays a major role in our efforts to maintain a free and open Indo-Pacific. Thus, it is only fitting that we put Delhi in the same category as our closest allies: NATO, Australia, New Zealand, Japan, South Korea, and Israel.

I also have a provision that would prevent any defense sales to Azerbaijan until Azerbaijan has released all Armenian prisoners of war (POW's). The unprovoked Azerbaijani and Turkish attack in Artsakh on September 27, 2020 led to six weeks of devastating fighting that killed over 5,000 people and forced more than 100,000 ethnic Armenians to flee Artsakh. While Armenia, Azerbaijan, and Russia signed a tenuous ceasefire agreement that went into effect on November 10, 2020 that brought an end to the fighting, an estimated two hundred Armenian POW's remain in captivity subjected to documented abuse and mistreatment. This is not only in direct contradiction to the terms of the ceasefire, but also the Third Geneva Convention on the Humanitarian Treatment of Prisoners of War. Shockingly, Azerbaijan received over \$100 million in U.S. military assistance in Fiscal Years 2018 and 2019 through the Section 333 Building Partner Capacity program. The United States must hold Azerbaijan accountable if we are serious about reengaging in the region in a way that advances a sustainable peace that reflects the interests of all parties involved.

Again, thank you for the opportunity to testify in favor of the inclusion of important provisions in the Fiscal Year 2022 National Defense Authorization Act (NDAA).