

## Congressional Closeup by Carl Osgood

### Byrd Threatens Filibuster Of Iraq War Resolution

The two leaders of the Senate, Majority Leader Tom Daschle (D-S.D.) and Minority Leader Trent Lott (R-Miss.), emerged from meetings of their respective caucuses on Oct. 8, expressing optimism about the prospects for passage of the resolution granting President George Bush authority to use force against Iraq. Daschle announced that he would be filing a cloture motion later that day, that would set up three cloture votes, which are required by arcane features of the Senate rules, on Oct. 10, "in an effort to bring debate to a close" by Oct. 11. Moments earlier, Lott had said, "I think the situation looks very positive on the Iraq resolution," in large part because of six Democrats who signed on as co-sponsors of the resolution.

However, there is a potential monkey wrench in the process, in the person of Sen. Robert Byrd (D-W.V.), as Sen. Joe Lieberman (D-Conn.), one of the Democrats backing the war resolution, admitted to reporters. During the Democratic caucus meeting, Byrd threatened to filibuster the resolution, which, Lieberman said, "does have an effect." Lieberman reported that during the meeting, Byrd "spoke about why he thought our resolution was, to put it mildly, not a good idea." It is unclear whether Byrd has the votes to maintain a filibuster, but his action can delay the final vote by as much as a week, at least.

On the House side, a filibuster is not available. Debate in the House, which began on Oct. 8, was preceded by an announcement by Majority Leader Dick Armey (R-Tex.) that he would support the resolution. This is a turn around from skepticism he had expressed earlier in the year about President Bush's drive for war. "For the U.S. to act first," he said, "the threat must be clear and present. It is." He

claimed that he had come around to this conclusion after a "careful, exhaustive review of the facts."

### Byrd Invokes Constitution Against Bush's War Drive

Eighty-four-year-old Sen. Robert Byrd's (D-W.V.) oratorical skills were on display on Oct. 4, when debate began in earnest in the Senate on the resolution to give President George Bush authority to use military force against Iraq. Both in debate with John Warner (R-Va.), one of the resolution's sponsors, and Joe Lieberman (D-Conn.), and later in a colloquy with Edward Kennedy (D-Mass.), Byrd left little doubt as to the Constitutional issues involved. In the process, he slammed House Minority Leader Richard Gephardt (D-Mo.), without naming him, for joining with the White House in a deal on the House Resolution.

The focus of Byrd's *tour de force* was on the dangers of putting the war-making powers, delegated to Congress by the Constitution, into the hands of one man. He quoted James Madison on that point, saying, "The trust and temptation are too great for any one man." He added that the debate is not really about Iraq, but rather on "this new Bush doctrine of pre-emptive strikes. There is nothing in this Constitution about pre-emptive strikes. Yet . . . we are about to vote to put the imprimatur of the Congress on that doctrine."

Byrd developed his point using the language of the resolution itself, which grants the President authority "to use all means that he determines to be appropriate in order to enforce the United Nations Security Council Resolutions, . . . defend the national security of the United States against the threat posed by Iraq, and restore international peace and security in the re-

gion." Byrd said, "What a broad grant of naked power. To whom? One person, the President of the United States. This Constitution itself refutes it, refutes this resolution right on its face."

Byrd called it "another Gulf of Tonkin Resolution," and expressed his regret for having voted for the original 1964 Gulf of Tonkin Resolution, which led to the decade-long U.S. war in Vietnam.

Warner answered ineffectively. In response to Byrd's demand to know "what is new" with respect to Iraq, Warner admitted that, in fact, the Bush Administration has presented very little that is new. "I am urging the administration," he said, "to try and share more information with the Congress."

### Democrats Make Offer on Terrorism Insurance Bill

On Oct. 3, Sens. Chris Dodd (D-Conn.) and Charles Schumer (D-N.Y.) offered a proposal to break the stalemate on the terrorism insurance bill. The bill, which has been in conference for four months, has been hung up over the issue of punitive damages in liability cases involving terrorist attacks. The House version of the bill, passed last November, places limits on liability and prohibits punitive damages, whereas the Senate bill contains no such limitations. Democrats have since accused Republicans of trying to use the bill as a vehicle for tort reform.

The Dodd-Schumer proposal would substitute the House provision for one included in last year's education bill. The offer, Dodd said, "includes the consolidation of cases, moving into Federal court, no punitive damages on the Federal government, no punitive damages on insurers, and only punitive damages potentially on the bad actors." Schumer likened the

impasse over the bill to that on the bankruptcy reform bill, which was blocked in the House by a handful of anti-abortion Republicans who objected to a provision addressing the debts of abortion protestors. "Leadership," said Schumer, "means telling the few who are extreme and say they won't let anything happen unless total tort reform is in the bill, telling them, 'Hey, this is too important for that.' "

Dodd and Schumer unveiled their proposal only hours after President George Bush called on the conferees to find agreement on the bill. Republicans have argued that some \$15 billion in construction projects are on hold for lack of insurance, affecting 300,000 jobs. "The fact that there is no terrorism insurance," Bush said, "is affecting commerce and job creation." Republicans have expressed skepticism toward the Dodd-Schumer offer, but have not yet rejected it outright.

## Still No End in Sight For Budget Process

On Oct. 3, the House took up another continuing resolution to fund the government for another week, until Oct. 11. As had happened a week earlier, the debate featured acrimony and finger-pointing by both sides as to who is responsible for the impasse. Republicans continued to blame the Senate. Ernest Istook (R-Okla.) told the House that despite the legal requirement for them to do so, the Senate still has not passed a budget. "No wonder we have gridlock and deadlock," he said. David Obey (D-Wisc.), the ranking member on the Appropriations Committee, responded by telling the House, "Nothing whatsoever is preventing this House from taking up those [appropriations] bills and sending them to the other body, except the internal war which is going on in the majority party

caucus." This, he said, has created a situation in which Appropriations Committee Chairman Bill Young (R-Fla.) cannot bring the remaining eight bills to the floor.

Democrats failed, by a vote of 206 to 198, to amend the rule for debate so that they could bring up the Labor, Health and Human Services, and Education Departments appropriation bill, and an extension of unemployment benefits. Martin Frost (D-Tex.) told the House that if his amendment were approved, "perhaps we can start taking care of the business we were sent here to do."

A resolution to the budget impasse is still nowhere in sight. Some Democrats are expecting a lame-duck session after the November mid-term election, whereas Republicans prefer the process were put off until January, or even February 2003. Obey warned that in either case, attempts to resolve the impasse are unlikely to be successful. "When we come back after the election," he said, "we will have a huge Iraq war supplemental facing us, we will have the need to pass next year's appropriations bills, and we will never get to these unless we do our work, now."

## Kennedy Rejects Call for Imperialism

On Oct. 7, during debate on the Iraq war resolution, Sen. Edward M. Kennedy (D-Mass.) took on—as Sen. Robert Byrd (D-W.Va.) had a few days earlier—the real issue behind the drive for war against Iraq, the new National Security Strategy released on Sept. 20. Kennedy noted that the Bush Administration uses the words "pre-emptive" and "preventive" in describing its war policy; but that, in international relations, these words have fun-

damentally different meanings. While "pre-emptive" action can sometimes mean reaction to an imminent attack, and can be defended under international law, "preventive" military action refers to strikes that target a country before it has developed a capability that could someday be threatening." This kind of action, Kennedy said, has always been condemned throughout recent history, yet has cropped up in U.S. policy debate more than once since the end of World War II.

After giving a brief history of the debate about preventive war in the United States, Kennedy said, "Many of the arguments heard today about Iraq were made then about the Chinese Communist government: that its leadership was irrational and that it was therefore undeterrable." He noted that while the Bush Administration says the United States must take pre-emptive action against Iraq, "what the Administration is really calling for is preventive war, which flies in the face of international rules of acceptable behavior. . . . Disregarding norms of international behavior, the Bush strategy asserts that the United States should be exempt from the rules we expect other nations to obey. Earlier generations of Americans rejected preventive war on the grounds of both morality and practicality, and our generation must do so as well."

Kennedy concluded: "It is impossible to justify any such double standard under international law. Might does not make right. America cannot write its own rules for the modern world. To attempt to do so would be unilateralism run amok. The administration's doctrine is a call for 21st-Century American imperialism that no other nation can or should accept. It is the antithesis of all that America has worked so hard to achieve in international relations since the end of World War II."