Mr. President, I

broach this subject gingerly, as we

have shared many hours together on

the train ride from Washington to Wilmington,

where he departs. He should

go to Philadelphia, but he gets off at

Wilmington. I sent the Senator a note,

as he was in the middle of his discourse

and I would not want to interrupt him

if he chose to proceed with the line he

had. However, there are a number of

subjects that I think would be useful to

discuss with the distinguished Senator

from Delaware because he and I have

discussed foreign policy, as well as

many other subjects, on many occasions.

We have agreed on many subjects—

not always—and on many of our

judgments.

The first subject that is on my mind

is on the use of force in Kosovo. Specifically,

the level of public understanding

and support which is present

at the moment. Senator BIDEN and I,

along with 29 others, attended a meeting

in the Oval Office on Friday to discuss

the situation in Kosovo. The general

concern uniformly present, was

the level of public understanding of

this issue and the level of public support,

and the question of how much

public support we needed in order to

undertake these airstrikes. That would

be the first subject on which I would be

very interested in the views of the Senator

from Delaware.

If the Senator would

yield for a follow-up question, when the

Senator from Delaware spoke at the

meeting last Friday, he referred to the

issue of the likelihood of casualties.

When I had an opportunity to speak, I

did, too. We both made the same point,

although you made yours with more

emphasis, which is not

uncharacteristic.

I suggested to the President——

It is a compliment.

I suggested to the President that he

be very direct on the problems and the

risks, because if there is to be public

understanding, the public ought to be

informed about the risks.

When the Senator from Delaware

spoke, and he has repeated it today so

it is not something I am telling out of

a quasi-private meeting, he used the

word ‘‘probably,’’ as opposed to the

word ‘‘possibly.’’ The Senator and others

including myself all emphasized the

point that there had to be public

awareness as to what was going on in

Kosovo.

The President has made a start. He

led off his news conference with the

topic, but he did not give a 30-minute

speech in detail. That would be a short

speech considering the complexity of

this subject. This which raises the

question as to what is the level of public

understanding, which I think is a

very important factor in letting me go

to a second subject, if I may.

The first part of this is hypothetical.

If the President knew he would get an

affirmative vote in a resolution from

Congress on the use of force in Kosovo

would he be wise to seek it? Would it

strengthen his hand to have an affirmative

vote? I, as the Senator from Delaware,

do not like to deal with

hypotheticals, but we have to on some

occasions. So I ask my colleague about

his view as to whether the President

would welcome an affirmative vote if

he knew he would get one, and would

his hand be strengthened if he had congressional

authorization before he took

military action.

Mr. President, if the

Senator will yield again, first, I can

confirm the contentious meeting. In

fact, I can confirm that the Senator

from Delaware was present in many

contentious meetings, not only with

President Bush but others. Those were

the meetings where some light was

shed.

I was interested to note the

generational difference by the Senator

from Delaware, and he indeed associated

himself with the Vietnam war. I

would choose to associate myself with

the Persian Gulf war.

I don’t want to move

to a generation older. I would like to

move to a generation younger.

When my colleague talked about submitting

a resolution, he was very artful,

as he always is. He said it will be

constitutionally wise and politically

necessary. Then he moved on to say

that he believes the President has a

constitutional duty, although an argument

could be made on the other side.

As usual, the Senator from Delaware

anticipated the next line of inquiry as

to whether this military action is an

act of war. I believe this is a subject

which really could use some elaboration

and some discussion between

not only the Senator from Delaware

and myself but others in this not totally

filled Chamber.

When the Senator from Delaware refers

to the pending amendment offered

by the Senator from Texas, Mrs.

HUTCHISON, and the second-degree

amendment offered by the Senator

from New Hampshire, Senator SMITH, I

believe the Senator from Delaware will

be interested to know that the majority

leader had looked for an approach

where a substitute might be offered by

the leader of the Democrats and where

a substitute might be offered by Senator

LOTT.

It may well be that Senator LOTT

would be interested and perhaps agreeable—

obviously, I cannot speak for

Senator LOTT —to having the Biden

amendment proposed as he has articulated.

There might be an agreement by

the majority leader, which I would certainly

endorse, to have an up-down

vote without a two-stage procedure and

without having to go to a cloture vote.

For the people who are watching on

C-SPAN II, a cloture vote means that

there would be a vote to try and limit

the debate. It requires a supermajority

of 60. This would enable us to vote on

the resolution, however it is articulated.

There are three items on which I

would like the response of the Senator

from Delaware. Let me name them and

then come back to the one. Let me

name them in inverse order.

Should we have the vote strictly on a

resolution without a two-step procedure,

as the Senator from Delaware articulates

it?

Question No. 2: What are the considerations?

What is the argument that he doesn’t

have to come to Congress, that we are

not implicating a constitutional requirement

for congressional authorization

to undertake this military action,

if it is an act of war?

Let me deal with the most immediate

question; that is this business of a cloture

vote. I am, frankly, a little surprised

to see the necessity to go to a

cloture vote, although I do not question

anybody who seeks to. I really do

question this particular cloture vote. It

might be something that is worth discussing,

whether it is appropriate to

have a filibuster over the issue of the

use of force. A matter of this magnitude

which involves a Constitutional

authority, separation of powers, a provision

of the Constitution of which

there is none any more important.

So let me specify the question for the

consideration of the Senator. Is it appropriate

for a filibuster to be staged

to bar the Senate from voting on

whether to authorize or deny the President

authority to use force?

Will the Senator yield

for an additional question?

The Senator has gone

through a discussion as to what Senator

LOTT may have intended by the

cloture motion, by the amendments

pending, and by—as the Senator from

Delaware characterizes it—our arcane

procedure.

It may be we can

move ahead and structure a freestanding

resolution which has been discussed,

maybe two resolutions, one by

Senator DASCHLE on behalf of the

Democrats, one by Senator LOTT on behalf

of the Republicans, and vote.

But let me come to the question that

I think is by far the most important,

which the Senator from Delaware had

broached. That is the question about

whether there is a constitutional requirement

for congressional authorization.

As I look at the proposed military action,

what has been described constitutes

an act of war. The Constitution

gives the President extensive authority,

as Commander in Chief, but

gives the Congress the sole authority

to involve the United States of America

in war—to have a declaration of

war. That constitutional authority by

Congress has been very, very significantly

eroded.

Korea is perhaps the best example. I

had occasion recently to pick up Margaret

Truman’s biography on President

Truman and, seeing at least her

version as to what President Truman

faced in 1950, I wondered if the positions

I have taken have been correct.

But I stand by them, that there ought

not to be the use of force without congressional

authorization. The use of

force was authorized prior to the Gulf

war in a historic debate which occurred

on this floor back on January 10, 11 and

12 of 1991.

I agree with the distinguished Senator

from Delaware when he says the

Members of Congress like to avoid

votes on these issues. We faced an imminent

airstrike last February in Iraq,

February of 1998, and we chose not to

decide the issue. At that time airstrikes

were not made. In December of

1998, the Congress had ample opportunity

to decide the question about airstrikes

which did occur in mid-December

over Iraq. Again, the Congress decided

not to take up the issue. When we

took up the issue of use of force in 1991,

it came in a very unusual procedure,

where the Senator from Iowa, Senator

HARKIN, raised a procedural point the

day we swore in Senators who were

elected or reelected in November of

1990, so we took up the question.

So my view—and I have expressed it

a number of times on this subject—is

that however the matter is resolved, it

ought to be resolved by the Congress.

This subject has not really had the appropriate

kind of discussion and debate.

So, I now ask the question in a specific

form to the Senator from Delaware.

What are the arguments in favor

of the President’s position not to require

congressional authority? Does

the Senator from Delaware agree with

the proposition that I have articulated,

that the Constitution does require Congressional

authority before military

force is used in bombing in Kosovo?

If the Senator will

yield on this point.

When the Senator

goes over the sections, they are so

comprehensive as to make any prohibition

meaningless.

Which is one of the

grave difficulties of having a resolution

which prohibits Presidential action,

but tries to accommodate to some special

circumstance. In the articulation

of the circumstances, it renders it absolutely

meaningless and gives such

latitude to the President, which may

well be more latitude than he has

under the Constitution.

I come back for purposes of a question,

which I am about to ask, what the

Senator from Delaware has had to say

about the many occasions where force

has been used, where acts of war have

been undertaken. I agree totally that

simply a recitation of those occasions

does not establish a constitutional

norm. One of the grave difficulties is

that as the Congress sits silent, the

Senate sits silent again and again and

again. There has been such a total erosion

of the constitutional requirement

that the Congress has the authority to

declare war. The situation as to emergency,

which is used so frequently to

justify Presidential action, is totally

absent here.

This may be the clearest kind of case

which we have seen where there has

been time for a Congress to deliberate,

to consider, and to act. I believe that

the missile strikes in December of 1998

against Iraq should have required prior

congressional authorization. But an argument

can be made, tenuous as it is,

that we are still operating under the

resolution for the use of force from

January of 1991. I think it is wrong, but

one can make that argument.

When you talk about Libya, you may

talk about the element of surprise, injecting

some element of emergency. I

do not want to get involved as to

whether that is justifiable or not. But

if you take the present circumstance,

where the situation of Kosovo has been

building up for days, weeks, and

months, and where there has been

ample opportunity for the issue to be

considered by the Congress and where

the President has not taken the case to

the American people, and where debate

in the Senate only draws three Senators—

we are honored the Senator

from Virginia, the chairman of the

Armed Services Committee, has joined

us.

I join what the Senator from Delaware

has had to say about the debate

we had on the War Powers Act in 1983,

where I asked then-chairman of the

Foreign Relations Committee, Senator

Percy, a series of questions as to

whether Korea was an act of war, or

Vietnam was an act of war, developing

at that time a requirement for constitutional

authorization.

We then had a very spirited debate

with the Senator from Virginia, the

Senator from Delaware, the then-Senator

from Georgia, Senator Nunn, and

many others on January 10 and 11 in

1991. That is the kind of consideration

we ought to have now.

I believe it is possible we can articulate

a resolution like the resolution of

the distinguished Senator from Delaware

so you do not have the prohibition

and all these exceptions clauses

where we do not know what we are

talking about. If you have a resolution

denying the use of funds and then exceptions,

it is totally unintelligible.

If we have to delay the budget resolution,

this matter is of sufficient importance

that we can do the budget resolution

next week. We might impede upon

the recess. We can get that done and

have the kind of debate we need.

I thank my colleague from Delaware

for yielding and for the erudition which

he has brought to this subject, as he

teaches constitutional law and talks

about this substantive matter to acquaint

the American people as to what

the constitutional law requires. I yield

back to him so he can go on with his

speech. I want to hear the substance as

to why he thinks we ought to be undertaking

these military strikes as a matter

of national security, as a matter of

national policy, as a matter of vital national

interest, especially in the context

where he says that the American

people are not really informed, they

are not really in a position to be supportive

of this matter at this time.