formal discussions on Friday, followed by a news conference.

Mr. Blair has been a steadfast supporter of the administration's tough line on a new resolution. But he has also indicated that Britain would consider France's proposal to have a two-tiered approach, with the Security Council first adopting a resolution to compel Iraq to cooperate with international weapons inspectors, and then, if Iraq failed to comply, adopting a second resolution on military force. Earlier this week, Russia indicated that it, too, was prepared to consider the French position.

But the administration is now saying that if there is a two-resolution approach, it will insist that the first resolution provide Mr. Bush all the authority he needs.

''The timing of all this is impossible to anticipate,'' one administration official involved in the talks said. ''The president doesn't want to have to wait around for a second resolution if it is clear that the Iraqis are not cooperating.''

EXPRESSING SYMPATHY FOR THE PEOPLE OF AUSTRALIA

Mr. LOTT. Mr. President, the people of the United States were shocked and saddened to learn of the cold blooded and cowardly attack on hundreds of Australian tourists vacationing on the island of Bali, on October 12. In a few shocking seconds our friends lost more of their fellow Australians than at any time since the darkest days of World War II.

Although Australia is at the farthest corner of the earth, America has no greater friend or ally. Just this year Prime Minister John Howard addressed a joint session of the United States Congress to celebrate the 50th Anniversary of the signing ANZUS Treaty, the document that has formally tied our strategic destinies together for the Food of the entire Asian Pacific Rim.

But our relationship with Australia did not begin with the ratification of one treaty. American and Australian soldiers have fought together on every battlefield of the world from the Meuse Argonne in 1918 to the Mekong Delta and Desert Storm. In all of our major wars there has been one constant, Americans and Australians have been the vanguard of freedom. In fact when American troops launched their first combined assault on German lines in World War I, it was under the guidance of the legendary Australian fighter General John Monash. We share a common historic and cultural heritage. We are immigrant peoples forged from the British Empire. We conquered our continents and became a beacon of hope for people struggling to be free.

For over 100 years, the United States and Australia have been the foundation for stability in the South Pacific. When America suffered its worse loss of life since December 7, 1941, the first nation to offer a helping hand was Australia. The day after the attacks on Washington and New York, Australia invoked the mutual defense clause of the ANZUS Treaty. They were the first to offer military support. Australian special forces are in Afghanistan and after Great Britain have made the largest per capita contribution to our efforts there. In the fight to break the back of al-Quaeda and the Taliban, Australian troops scaled the mountains around Tora Bora.

Mr. President, we received another wake-up call on October 12. We can no longer let the nay sayers and the hand wringers counsel timidity have their way. The free world is clearly in the sights of fanatics who want to plunge us into a new dark age. Whether it be Saddam Hussein, Osama bin Laden, or the coward who attacked men, women, and children on holiday in Bali, they are part of the same threat to free peoples.

We send our heartfelt condolences to the people of Australia and pledge to stand with them in their fight for peace and freedom.

PRESIDENTIAL ABILITY TO LAUNCH AN ATTACK

Mr. BYRD. Mr. President, I would like to take this opportunity to submit for the RECORD two very thoughtful and well-researched documents submitted to me by renowned constitutional scholars with respect to the President's ability to launch an unprovoked military attack against a sovereign state.

Earlier this year, I wrote to a number of constitutional scholars advising them that I was concerned about reports that our Nation was coming closer to war with Iraq. I asked a number of esteemed academics their opinion as to whether they believed that the Bush Administration had the authority, consistent with the U.S. Constitution, to introduce U.S. Armed Forces into Iraq to remove Saddam Hussein from power.

All of the scholars I consulted responded by stating that, under current circumstances, the President did not have such authority. I have previously submitted for the RECORD the responses of professors Michael Glennon of Tufts, and Jane Stromseth of Georgetown University Law Center.

Now, I would like to submit two additional responses I received on this same subject from professors Laurence Tribe of Harvard Law School and William Van Alstyne of the Duke University School of Law. I found the depth and breadth of their scholarship on this subject to be extremely impressive and, for this reason, I ask unanimous consent that their responses to me be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DUKE UNIVERSITY,
SCHOOL OF LAW,
Durham, NC., August 7, 2002.

Senator ROBERT C. BYRD,
Chairman, U.S. Senate
Committee on Appropriations,
Washington, DC

DEAR SENATOR BYRD: I am writing in response to your letter of July 22 inquiring whether in my opinion, ''the Bush Administration currently has authority, consistent with the U.S. Constitution and the War Powers Resolution, to introduce U.S. Armed Forces into imminent or actual hostilities in Iraq for the purpose of removing Saddam Hussein from Power.'' You raise the question because, as you say, in your letter, you are ''deeply concerned about comments by the Bush Administration and recent press reports that our nation is coming closer to war with Iraq.''

I was away from my office at Duke University During the week when your inquiry arrived. Because you understandably asked for a very prompt response, I am foregoing a fuller, more detailed, statement to you just now, the day just following my reading of your letter, on August 6. I shall, however, be pleased to furnish that more elaborate statement on request. Briefly, these are my views:

A. The President may not engage our armed forces in ''war with Iraq,'' except in such measure as Congress, by joint or concurrent resolutions duly passed in both Houses of Congress, declares shall be undertaken by the President as Commander in Chief of the Armed Forces. As Commander in Chief, i.e., in fulfilling that role, the President is solely responsible for the conduct of whatever measures of war Congress shall authorize. It is not for the President, however, to presume to ''authorize himself'' to embark on war.

Whether the President deems it essential to the National interest to use the armed forces of the United States to make war against one of our neighbors, or to make war against nations yet more distant from our shores, it is all the same. The Constitution requires that he not presumed to do so merely on his own assessment and unilateral order. Rather, any armed invasions of or actual attack on another nation by the armed forces of the United States as an act of war requires decision by Congress before it proceeds, not after the President would presume to engage in war (and, having unilaterally commenced hostilities, then would merely confront Congress with a ''take-it-or-leave it'' fait accomplis). The framers of the Constitution understood the difference vividly—and made provision against vesting any war-initiating power in the Executive.[1]

B. Nor does the form of government of—or any policy currently pursued by—an identified foreign nation affect this matter, although either its form of government or the policies it pursues may of course bear substantially on the decision as shall be made by Congress. Whether, for example, the current form of government of Iraq is so dangerous that no recourse to measures short of direct United States military assault to ''remove'' that government (a clear act of war) now seem sufficient to meet the security needs either of the United States or of other states with which we associate our vital interests, may well be a fair question. That is a fair question, however, is merely what therefore also makes it right for Congress to debate that question.

Indeed, it appears even now that Congress is engaged in that debate. And far from feeling it must labor under any sense of apology

[1] It is today, even as it was when Thomas Jefferson wrote to James Madison from Paris, in September, 1789, referring then to the constitutional clauses putting the responsibility and power to embark on war in Congress rather than in the Executive. And thus Jefferson observed: ''We have given, in example, one effectual check to the dog of war, by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.'' C. Warren, The Making of the Constitution 481 n. 1 (1928). (See also Chief Justice Johnson Marshall's Opinion for the Supreme Court in Talbot v. Seeman, 5 U.S. (1 Cranch) 1,28 (1803) (''The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides.'')