Lengthening the Tenure of the Chairman (CJCS) and Vice Chairman (VCJCS)

By: Mark Cancian
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BACKGROUND

Both the House and Senate bills contain provisions to lengthen the term of service for the chairman of the Joint Chiefs of Staff (CJCS) from two years to four. These provisions would put historical practice into statute. Currently, the CJCS is appointed to serve a term of two years that may be renewed to a second term of two years. However, since the Goldwater-Nichols Act was passed, every chairman has been reappointed to serve for a full four years except General Peter Pace, whom Secretary Robert Gates did not recommend for reappointment in anticipation of divisive Senate confirmation hearings over the conduct of the Iraq War.¹

These measures may be viewed as part of the broader effort of what Secretary Carter called “nudging the pendulum” toward strengthening the capabilities and independence of the chairman.² As the House National Defense Authorization Act (NDAA) report explains, “a longer term of office for the Chairman provides greater stability and continuity of military leadership at the Department of Defense,” and that “by staggering the Chairman’s term of

office such that it is not aligned with the 4 year presidential election cycle, the ability of the Chairman to provide independent military advice is reinforced.

This provision has enjoyed broad support. For example, CSIS president John Hamre and General Carter F. Ham both spoke in favor of extending the chairman’s term to four years during questioning in a recent hearing of the House Armed Services Committee.3

The Senate also makes the vice chairman’s (VCJCS) term four years, comparable to the chairman’s. As with the chairman, the VCJCS’s term has been routinely extended to the full four years.

Controversial is the Senate provision to make the vice chairman position career terminal. The Senate report explains this change as follows: “The committee believes that this adjustment to the law would ensure a high quality of military advice to civilian leaders, and ultimately strengthen civilian control over the military.”

Also, there are different provisions regarding the beginning of the terms. The Senate would stagger the terms of CJCS and VCJCS so they did not start in the same year. As the report notes, “the staggered terms of service for the Chairman and Vice Chairman, which would prevent both officers from turning over at the same time, which has been the case since 2007 but was not as the law originally intended.”

The House would start the chairman’s tenure nearly 3 years into a presidency, so the next president would work with the preceding president’s appointment for most of the first term. (For example, the next president will be inaugurated on January 20, 2017, and the CJCS term would run until October 1, 2019.) This conforms to recent practice—General Joseph F. Dunford was appointed on October 1, 2015—but not to earlier practice. General Pace’s two-year term changed the alignment of presidential and CJCS terms. Previously chairmen had been appointed on October 1 in the first year of a presidential term. The effect of the change is to make the chairman’s advice more independent but less aligned with the president.

Dov Zakheim, former-DoD comptroller, argued for independence in his recent testimony before the House Armed Services Committee: “The Chairman should be able to provide military advice to the Commander-in-Chief even if it conflicts with that of the Secretary of Defense. In that regard, it is important that the Chairman and Vice Chairman be appointed to staggered four-year terms so as to reinforce their independence.”4

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Table 1: Remarks from Congress and Administration

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<th>Senate NDAA 2017 S.2943, Section 921</th>
<th>House NDAA H.R. 4909, Section 907</th>
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<td>“[CJCS] Term of Service…amended…(A) in paragraph (1), by striking ‘two years, beginning on October 1 of odd-numbered years’ and all that follows and inserting ‘four years, beginning on October 1 of an odd-numbered year…”</td>
<td>”(1) … by striking ‘a term of two years’ and all that follows through the end and inserting the following: ‘a term of four years, beginning on October 1 of a year that is three years following a year evenly divisible by four. The limitation of this paragraph on the length of term does not apply in time of war…”</td>
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<td>[VCJCS] Term of Service…amended by striking ‘two years’ and inserting ‘four years.’ Ineligibility for Service as Chairman or Any Other Position in the Armed Forces…(4) The Vice Chairman shall not be eligible for promotion to the position of Chairman or any other position in the armed forces. The term of the Vice Chairman shall be established so as not to begin in the same year as the term of the Chairman.”</td>
<td>”(2) …by striking ‘exceeds six years’ and all that follows through the end and inserting the following: ‘exceeds eight years. The limitation of this paragraph does not apply in time of war.’ Delayed Effective Date.—The amendments made by this section shall take effect on October 1, 2019.”</td>
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ASSESSMENT

Neither the House nor Senate’s legislation extending the term of the chairman and vice chairman produced objections in the White House’s SAPs or the secretary’s “heartburn letter,” which makes it likely that they will make it into the final legislation.

Further, there are good reasons for lengthening the tenure to four years. Having a shorter term than the service chiefs implies a lower level of confidence in the incumbents. There is also an implied reduction in independence, as the incumbents must look to maintaining enough support from the secretary, president, and Congress to be renewed in office.
By allowing a combined tenure of eight years, the House version explicitly allows the vice chairman to step up as chairman. The House therefore disagrees with the Senate provision that makes the vice chairman a career terminal position.

Such a provision making the deputy/vice position terminal does not exist for the individual services; that is, the vice chief of staff (or assistant commandant or vice chief of naval operations) can step up to the principal position. Such an elevation is not routine, but it does happen occasionally. The thinking is that the secretary and president should have the widest possible pool of candidates. There is no apparent reason to limit the secretary and president’s selection for chairman.

Further, making the vice chairman a “lame duck” from day one reduces the position’s influence and stature.

The Senate report language provides little justification for such a significant change.

RECOMMENDATIONS FOR A WAY FORWARD

There is clear agreement among the House, Senate, and executive branches and support in the broader community for lengthening the terms of service for both the chairman and vice chairman.

There does not appear to be a compelling reason to make the vice chairman’s position career terminal. No abuses have occurred, and there are clear downsides. This provision could therefore be dropped.

Staggering the terms of CJCS and VCJCS makes sense both for continuity and to better align appointments with secretarial tenures.

Mark Cancian is a senior adviser with the CSIS International Security Program.