



**Legislative Bulletin.....June 3, 2011**

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**H.Con.Res. 51— Directing the President, pursuant to section 5(c) of the War Powers Resolution, to remove the United States Armed Forces from Libya (*Kucinich, D-OH*)**

**Order of Business:** The resolution is scheduled to be considered on Friday, June 3, 2011, subject to a closed rule. According to House Leadership, this resolution is currently not “privileged,” but it would have become privileged after 15 calendar days if the House had not taken action. It is RSC Staff’s understanding that House Leadership wishes to act on the Kucinich resolution before it becomes privileged and before Rep. Kucinich can bring it to the floor under different terms.

**Summary:** H.Con.Res. 51 uses section 5(c) of the War Powers Resolution of 1973 to direct the President to remove the United States Armed Forces from Libya within 15 days of adoption of this resolution.

**War Powers Resolution Background:** Section 5(c) of the War Powers Resolution states: “Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.”

Under the War Powers Resolution, the President must obtain Congressional approval for any military action that lasts longer than 60 days. If Congress does not consent to military action, the President must withdraw troops within 30 days. The United States began in Operation Odyssey Dawn on March 19, 2011. Because Congress has not authorized the use of military action, the 60-day authorization deadline expired on May 20, 2011, and the 30-day withdrawal deadline expires on June 19, 2011.

To read the full text of the War Powers Resolution, visit this page:  
[http://avalon.law.yale.edu/20th\\_century/warpower.asp](http://avalon.law.yale.edu/20th_century/warpower.asp)

**Additional Information:** On June 1, 2011, NATO announced it would continue combat operations in Libya for another 90 days. The U.S. intervention in Libya began on March 19, 2011, and President Obama has not consulted Congress at any point on this issue. Military actions in Libya were originally being led by the United States, and NATO took command on March 24, 2011.

For additional background on the U.N. Security Council Resolution and the U.S. Military Action in Operation Odyssey Dawn [click here](#).

For information regarding the unrest in the Middle East and North Africa, which led to the U.N. Security Council Resolution and the U.S. Military Action in Operation Odyssey Dawn, including [click here](#).

Many Members of Congress (from both parties) have recently expressed concerns regarding President Obama's actions (or inactions) regarding Libya. President Obama consulted with the international community, the United Nations Security Council, and NATO regarding military actions in Libya, but failed to consult with the U.S. Congress. The Obama Administration justified the President's deployment of armed forces under the War Powers Resolution. It is important to note that the War Powers Resolution requires that, absent a declaration of war or specific statutory authorization, there must be a "national emergency created by attack upon the United States, its territories or possessions, or its armed forces."

**Supporting Arguments:** Article I Section 8 of the Constitution of the United States clearly states that it is Congress' role to declare war. Recent U.S. military actions in Libya constitute an act of war, which was authorized by President Obama without seeking the approval of Congress. Instead, President Obama consulted with the United Nations before authorizing action. Several Members have expressed serious concerns that by only seeking U.N. approval before taking action, the President has set a dangerous precedent that transfers authority that should rest with the legislative branch, to an international organization. Some critics argue that while the President is Commander in Chief he does not have the authority to unilaterally launch strikes without an imminent threat to the U.S. Many Members may argue that the Founders intended to separate the power to initiate a war from the power to carry it out.

**Potential Conservative Concerns:** Some conservatives may be concerned that passage of this resolution would be seen as a U.S. retreat in the eyes of Col. Gaddafi. This could encourage Col. Gaddafi to continue his oppressive regime's goal to "cleanse Libya house by house." While this mission is being led by NATO, a withdrawal by the United States would, to some degree, mean a victory to Col. Gaddafi and those loyal to him. It could also potentially make the U.S. look weak on a global scale and in the eyes of our enemies.

It is worth noting that in recent years, Presidents of both parties have ordered military action without Congressional authorization, such as when President George H.W. Bush intervened in Somalia in 1992, and when President Bill Clinton bombed Kosovo in 1999.

Additionally, some conservatives might be concerned about the constitutionality of the War Powers Resolution. Historically, it has been controversial due to the question of whether the Resolution blurs the lines between Legislative and Executive branch authority (see Constitutional Authority section for more).

**RSC Bonus Quote:** “The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation,” then Senator Obama [told](#) The Boston Globe on December 20, 2007.

**Committee Action:** H.Con.Res. 51 was introduced on May 23, 2011 and referred to the House Committee on Foreign Affairs. No further public action was taken.

**Administration Position:** No Statement of Administration Policy is provided.

**Cost to Taxpayers:** No CBO score is available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time. However, the resolution contains no earmarks.

**Constitutional Authority:** None is cited. House Rules do not require a statement of constitutional authority on H.Con.Res. However, the War Powers Resolution has been surrounded with controversy regarding its constitutionality for decades. Presidents typically treat it as an overreach of Congressional authority and Congress typically cites the Necessary and Proper Clause as its constitutional authority. As stated in the War Powers Resolution of 1973: “(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.” Presumably, the foregoing power here is the congressional power to declare war.

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**H.Res. 292 - Declaring that the President shall not deploy, establish, or maintain the presence of units and members of the United States Armed Forces on the ground in Libya, and for other purposes.  
(Boehner, R-OH)**

**Order of Business:** The resolution is scheduled to be considered on Friday, June 3, 2011, subject to a closed rule. **Note:** Since this resolution was introduced on June 2, 2011 it is in clear violation of the House's three day layover rule.

**Summary:**

**Section I:** H.Res. 292 states that is the policy of the House of Representatives that:

- “The United States Armed Forces shall be exclusively to defend and advance the national security interests of the United States;
- “The President has failed to provide Congress with a compelling rationale based upon United States nation security interests for current United States military activities regarding Libya; and
- “The President shall not deploy, establish, or maintain the presence of units and members of the United States Armed Forces on the ground in Libya.”

**Section II:** This section is very similar to H.Res. 208 and H.Res. 209 by Rep. Cole (R-OK). Within 14 days of enactment, the Secretary of State, Secretary of Defense, and the Attorney General shall transmit copies of any official document, record, memo, correspondence, or other communication that was created on or after February 15, 2011 and relates to:

- Consultation or communication with Congress regarding the employment or deployment of the United States Armed Forces for Operation Odyssey Dawn or NATO Operation Unified Protector; and
- The War Powers Resolution and Operation Odyssey Dawn or NATO Operation Unified Protector.

**Section III:** Within 14 days of enactment, the resolution calls on the President to transmit a report to the House of Representatives describing U.S. security interests and objectives, and the objectives of the U.S. Armed Forces in Libya since March 19, 2011, including a description of the following:

- “The President’s justification for not seeking authorization by Congress for the use of military force in Libya;
- “United States political and military objectives regarding Libya, including the relationship between the intended objectives and the operational means being employed to achieve them;
- “Changes in the United States political and military objectives following the assumption of command by the NATO;
- “Differences between United States political and military objectives regarding Libya and those of other NATO member states engaged in military activities;
- “The specific commitments by the United States to ongoing NATO activities regarding Libya;

- “The anticipated scope and duration of continued United States military involvement in support of NATO activities regarding Libya;
- “The costs of United States military, political, and humanitarian efforts concerning Libya as of June 3, 2011;
- “The total projected costs of United States military, political, and humanitarian efforts concerning Libya;
- “The impact on United States activities in Iraq and Afghanistan;
- “The role of the United States in the establishment of a political structure to succeed the current Libyan regime;
- “An assessment of the current military capacity of opposition forces in Libya;
- “An assessment of the ability of opposition forces in Libya to establish effective military and political control of Libya and a practicable timetable for accomplishing these objectives;
- “An assessment of the consequences of a cessation of United States military activities on the viability of continued NATO operations regarding Libya and on the continued viability of groups opposing the Libyan regime;
- “The composition and political agenda of the Interim Transitional National Council (ITNC) and its representation of the views of the Libyan people as a whole;
- “The criteria to be used to determine United States recognition of the ITNC as the representative of the Libyan people, including the role of current and former members of the existing regime;
- “Financial resources currently available to opposition groups and United States plans to facilitate their access to seized assets of the Libyan regime and proceeds from the sale of Libyan petroleum;
- “The relationship between the ITNC and the Muslim Brotherhood, the members of the Libyan Islamic Fighting Group, al-Qaeda, Hezbollah, and any other group that has promoted an agenda that would negatively impact United States interests;
- “Weapons acquired for use, and operations initiated, in Libya by the Muslim Brotherhood, the members of the Libyan Islamic Fighting Group, al-Qaeda, Hezbollah, and any other group that has promoted an agenda that would negatively impact United States interests;
- “The status of the 20,000 MANPADS cited by the Commander of the U.S. Africa Command, as well as Libya’s SCUD–Bs and chemical munitions, including mustard gas;
- “Material, communication, coordination, financing and other forms of support between and among al-Qaeda operatives, its affiliates, and supporters in Yemen, the Horn of Africa, and North Africa; and
- “Contributions by Jordan, the United Arab Emirates, Qatar, and other regional states in support of NATO activities in Libya.”

**Section IV:** This resolution also contains the following findings:

- “The President has not sought, and Congress has not provided, authorization for the introduction or continued involvement of the United States Armed Forces in Libya;

- “Congress has the constitutional prerogative to withhold funding for any unauthorized use of the United States Armed Forces, including for unauthorized activities regarding Libya.”

**Conservative Concerns:** Some conservatives have expressed concerns that this resolution does not go far enough in condemning President Obama for not getting approval from Congress prior to engaging the U.S. Armed Forces.

This resolution states that it is the policy of the House of Representatives that “the President shall not deploy, establish, or maintain the presence of units and members of the United States Armed Forces **on the ground** in Libya.” Some conservatives have asserted that this resolution is insufficient, as there are currently no troops on the ground in Libya, and the President has repeatedly claimed that there will be no troops on the ground. If enacted, this resolution does nothing but require a report, and does not state that the House policy is different than that of U.S. military actions that are currently being undertaken.

Other conservatives have concerns that, by only requiring a report due within 14 days, this resolution misses the opportunity to express Members concerns that President Obama is in clear violation of the War Powers Resolution.

Additionally, the findings of this resolution contain a mention of the House of Representatives’ “power of the purse,” however this resolution does not make clear what Congress would do if the President does not immediately withdraw armed forces.

Since this resolution was introduced on June 2, 2011, and will be coming to the House floor on June 3, 2011, this is in clear violation of the House’s 3 day layover rule.

**Committee Action:** H.Res. 292 was introduced on June 2, 2011, and referred to the House Foreign Affairs Committee which took no public action.

**Administration Position:** No Statement of Administration Policy is provided.

**Cost to Taxpayers:** No CBO score is available, though the resolution authorizes no expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time. However, the resolution contains no earmarks.

**Constitutional Authority:** None is cited. House Rules do not require a statement of constitutional authority on House resolutions.

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