



Legislative Bulletin.....June 23, 2011

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H.R. 2278 - To limit the use of funds appropriated to the Department of Defense for United States Armed Forces in support of North Atlantic Treaty Organization Operation Unified Protector with respect to Libya, unless otherwise specifically authorized by law. (Rooney, R-FL)

Order of Business: The legislation is tentatively scheduled to be considered on Friday, June 24, 2011, subject to a closed rule. The rule provides for one hour of debate equally divided and controlled by the Chairman and ranking member of the Armed Services Committee. The rule waives all points of order against consideration and provides for one motion to recommit.

Summary: H.R.2278 would prohibit funding, that is currently available to the Department of Defense, for U.S. military operations that are in support of the ongoing North Atlantic Treaty Organization (NATO) Operation Unified Protector in Libya.

This legislation would make an exception for U.S. Armed Forces engaging in:

- Search and rescue;
- Intelligence, surveillance, and reconnaissance;
- Aerial refueling; and
- Operation planning.

Supportive Arguments: Many Members of Congress (from both parties) have repeatedly expressed concerns regarding President Obama’s actions, as well as his failure to consult with Congress, 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.”

Many Members have called on the President to clearly state the U.S. mission and seek congressional approval before taking additional action. Many conservatives may be concerned that by only seeking U.N. approval before taking action, the President is setting 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 launch strikes without an imminent threat to the U.S. Conservatives might argue that the founders intended to separate the power to decide to initiate a war from the power to carry it out. However, 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. “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 in December 2007.

Some liberals have also expressed concern over President Obama’s actions, such as when Rep. Kucinich (D-OH) stated on March 21, 2011, “It needs to be pointed out that what he is doing is outside the Constitution.” Kucinich continued, “If he is relying on precedent, then he ought to say so. But he’s got to square that with his own understanding of the Constitution prior to becoming president.”

Additionally, some Members of Congress may be concerned that this intervention has no clear end game. If Col. Gadaffi is removed from power, the United States could be pulled into years of “nation building,” which could involve U.S. troops on the ground.

Conservative Concerns: Some conservatives have expressed concern that passage of this resolution could only minimally alter current U.S. military operations in Libya. While this resolution does restrict U.S. funds for certain operations, it makes exceptions for most activities that are currently being undertaken by the U.S. military.

Therefore, some conservatives might have concerns because passage of this legislation could be viewed as an inexplicit authorization of U.S. taxpayer funds for those activities that are granted the exception. Also, while there is an exception for certain activities in this resolution, there is no time limit on that exception. Passage of this resolution could be viewed as authorizing unlimited amounts of funding for those activities, for an undefined amount of time.

Since military action began on March 19th, President Obama has stated no clear direction for military operations in Libya. Some conservatives may believe this resolution does not sufficiently reign in actions by the Executive Branch, because it allows the United States military to continue with most current actions. The most notable actions currently being

undertaken by U.S. armed forces, that would be prohibited by passage of this resolution, are unmanned Predator UAV strikes.

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.R. 2278 was introduced on June 22, 2011, and referred to the House Armed Services Committee, which took no public action.

Administration Position: No Statement of Administration Policy is provided.

Cost to Taxpayers: No CBO score is available. The total cost of DOD military operations and humanitarian assistance, according to the Administration, through June 3, 2011, in Libya is estimated at \$715.9 million. ([Source: page 14](#))

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?: The resolution contains no earmarks.

Constitutional Authority: Rep. Rooney’s statement of constitutional authority, found in the Congressional Record, states “Congress has the power to enact this legislation pursuant to the following: Article I, section 8, clauses 11 through 13, relating to Congress' authority to declare war, raise and support armies, and provide and maintain a Navy, respectively.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-9717.

H.J.Res. 68 – Authorizing the limited use of the United States Armed Forces in Support of the NATO mission in Libya (*Hastings, D-FL*)

Order of Business: The legislation is tentatively scheduled to be considered on Friday, June 24, 2011, subject to a closed rule. The rule provides for one hour of debate with 40 minutes equally divided and controlled by the Chairman and ranking member of the Foreign Affairs Committee. The rule also provides for 20 minutes equally divided and controlled by the Chairman and ranking member of the Armed Services Committee. The rule waives all points of order against consideration and provides for one motion to recommit.

Summary: This resolution would authorize the United States Armed Forces in Libya, in support of United States national security policy interests, as part of the NATO mission to enforce United Nations Security Council Resolution 1973 (2011) as requested by the Transitional National Council, the Gulf Cooperation Council, and the Arab League. The resolution states this authorization is for “limited” use of the U.S. Armed Forces, and this authorization will expire one year after the date of enactment.

Ground Troops: This resolution does not endorse United States ground troops, **unless** the purpose of their presence is limited to the immediate personal defense of United States Government officials (including diplomatic representatives) or to rescuing members of NATO forces from imminent danger.

Reports to Congress: This resolution states that the President shall consult frequently with Congress regarding United States efforts in Libya, including by providing regular briefings and reports as requested, and responding to inquiries promptly. The President’s briefings and reports are mandated by this resolution to include the following elements:

- An updated description of United States national security interests in Libya;
- An updated statement of United States policy objectives in Libya, both during and after Qaddafi's rule, and a detailed plan to achieve them;
- An updated and comprehensive list of the activities of the United States Armed Forces in Libya;
- An updated and detailed assessment of the groups in Libya that are opposed to the Qaddafi regime, including potential successor governments; and
- A full and updated explanation of the President's legal and constitutional rationale for conducting military operations in Libya consistent with the War Powers Resolution (50 U.S.C. 1541 et seq.).

Potential Concerns: Some Members have expressed concerns with authorizing force in Libya because the President has stated no clear goals for U.S. involvement. Also, President Obama, and this resolution, both fail to indicate what national security interest the U.S. has in regards to Libya.

Some Members have expressed concerns that we only have limited information about the opposition, currently being led by the Benghazi-based Transitional National Council, who we are supporting by our military involvement. After U.S. military involvement in Iraq, Col. Gaddafi gave up his nuclear program and cooperated with the U.S. to combat terrorism. On May 15, 2006, the U.S. State Department announced that it would restore full diplomatic relations with Libya, once Gaddafi declared he was abandoning Libya's weapons of mass destruction program. The State Department also said that Libya would be removed from the list of nations supporting terrorism. ([Source: BBC News](#)) There is no indication that any potential successor would not be a threat to various U.S. national security interests.

Additionally, some Members have expressed concern with authorizing the use of military force in Libya, because Libya poses no national security threat to the United States, and current U.S. actions are not based off attacks against the United States.

Committee Action: H.J.Res. 68 was introduced on June 22, 2011, and referred to the House Foreign Affairs Committee and the House Armed Services Committee, which took no public action.

Administration Position: No Statement of Administration Policy is provided. However, the Administration has publically supported similar legislation the Senate, S.J.Res. 20, sponsor by Senator Kerry.

Cost to Taxpayers: No CBO score is available. The total cost of DOD military operations and humanitarian assistance, according to the Administration, through June 3, 2011, in Libya is estimated at \$715.9 million. ([Source: page 14](#))

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. This resolution would authorize the use of U.S. military force in Libya.

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: Rep. Hastings' statement of constitutional authority, available in the [Congressional Record](#), states: "Congress has the power to enact this legislation pursuant to the following: Article I, section 8, clauses 11 through 13, relating to Congress' authority to declare war, raise and support armies, and provide and maintain a Navy, respectively."

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-9717.

Background Information for Both Pieces of Legislation:

The Current U.S. Role in Libya: According to the Administration's report on U.S. activities in Libya, since turning over control to NATO of this mission, we are currently engaging in the following actions ([Source: page 8](#)):

- ¼ of the sorties flown in Libya are by the U.S.
 - According to the Administration, the U.S. share has decreased over time
- There are 20 ships enforcing the arms embargo and are of European or Canadian
 - None of these ships enforcing the embargo are from the U.S.
- American strikes are "limited to the suppression of enemy air defense and occasional strikes by unmanned Predator UAVs against a specific set of targets, all within the UN authorization."

- The United States provides nearly 70 percent of the coalition's intelligence capabilities and a majority of its refueling assets.

The Administration has worked with the Transitional National Council (TNC) (who is formally recognized by some countries, but not the U.S.) to “facilitate greater political, financial, and non-lethal support, to include up to \$25 million in medical supplies, rations, and personal protective gear.”

The total cost of DOD military operations and humanitarian assistance, through June 3, 2001, in Libya is estimated at \$715.3 million. ([Source: page 14](#))

Libya Timeline: Below is a timeline of key events regarding military operations in Libya. At no point has Congress approved military action in Libya.

March 1, 2011 – The Senate passed S.Res. 85 by unanimous consent. This resolution, among other things, urged the U.N. Security Council to take action to protect civilians, and this includes the possibility of a no-fly zone over Libya.

- **Note:** There has been **no** such similar action in the House of Representatives.

March 18, 2011 – The U.N. Security Council approved a resolution that authorized military operations against Libyan Leader Mommar Gadaffi. 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 lead to the U.N. Security Council Resolution and the U.S. military action in Operation Odyssey Dawn, [click here](#).

March 19, 2011 - The U.S. intervention in Libya began.

March 21, 2011 – President Obama notified Congress of the commencement of military operations in Libya. The letter to Speaker Boehner is [linked here](#).

March 24, 2011 - NATO took command of military operations in Libya. The U.S. had been in command up until this point. A NATO press release is [linked here](#).

May 20, 2011 – The 60 day authorization deadline pursuant to the War Powers Resolution expired.

May 26, 2011 – The House passed an amendment to the National Defense Authorization Act, offered by Mr. Conyers, which prevented funds in the legislation from being used to fund ground troops in Libya. The amendment passed by a [roll call vote of 416-5](#).

June 1, 2011 - NATO announced it would continue combat operations in Libya for another 90 days. A NATO press release is [linked here](#).

June 3, 2011- The House of Representatives considered two resolutions regarding military actions in Libya. The RSC's analysis of these resolutions can be [viewed here](#).

- Rep. Kucinich’s H.Con.Res. 51 – This resolution would have directed the President to withdraw U.S. Armed Forces from Libya within 15 days. This resolution failed to pass the House by a [roll call vote of 148-265](#).
- Speaker Boehner’s H.Res. 292 – This resolution contained statements of House policy, and directed the President to report to the House of Representatives, within 14 days, of U.S. security interests and objectives regarding military operations in Libya. It also directed the Secretary’s of State and Defense to transmit copies of certain documents to the House of Representatives, within 14 days. This resolution passed the House by a roll call vote of [268-145-1](#).

June 15, 2011 – The Administration released a report ([linked here](#)) detailing current operations in Libya, and indicated that, due to the “limited nature, scope and duration of the anticipated actions, the President had constitutional authority” ([Source: page 25](#)) to authorize U.S. military actions in Libya. Many Members of the U.S. Congress would disagree with this reasoning for constitutional authority, and would disagree that the U.S. is only playing a “limited role.” Additionally, Members might disagree that current U.S. military actions in Libya are “legitimated” solely by the U.S. Security Council Resolution.

June 19, 2011 - The 30 day withdrawal deadline pursuant to the War Powers Resolution expired.

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-9717.
