

WAR POWERS, UNITED STATES OPERATIONS IN LIBYA, AND RELATED LEGISLATION

HEARING BEFORE THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

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WAR POWERS, UNITED STATES OPERATIONS IN LIBYA, AND RELATED LEGISLATION

WEDNESDAY, MAY 25, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room 2172 Rayburn House Office Building, Hon. Ileana Ros-Lehtinen (chairman of the committee) presiding.

Chairman ROS-LEHTINEN. The hearing will come to order. After the ranking member and I make our opening remarks, committee members will have the opportunity to make 2-minute statements before we hear from today's distinguished panelists, that's distinguished except for Mr. Rooney of Florida.

And, without objection, Members, including today's panelists, may have up to 5 days to insert statements into the record, and the chair will recognize herself.

We meet today as part of our continuing oversight of the United States involvement in Libya to hear from our non-committee colleagues who have introduced legislation on war powers, and on authorities relating to the use of force to address the situation in Libya.

The committee will continue our efforts tomorrow morning at the House-wide Members briefing with legal experts. That briefing had to be rescheduled from May 12th due to the avalanche of House floor votes.

As we have reviewed before, the President commenced U.S. military operations inside Libya on March 19th, and notified Congress within 48 hours consistent with the War Powers Resolution. He announced operations limited in their nature, duration, and scope as part of an international effort "to prevent a humanitarian catastrophe and address the threat posed to international peace and security by the crisis in Libya."

The administration has claimed that congressional approval was not constitutionally required, and that the use of force in Libya was constitutional because the President "could reasonably determine that such use of force was in the national interest"—an extremely broad claim of war making power. Even some who regard the President's action as legal are concerned that the endorsement by the Arab League, the United Nations, and NATO seem to figure more prominently in his stated justifications than do clearly identified U.S. national security interests.

Since the President's notification, NATO-led air strikes in Libya have inflicted serious damage on Ghadafi regime's war machine,

yet lawless troops continue to demonstrate cohesiveness and operational superiority over rebel forces.

Last Friday, concurrent with the 60-day deadline under the War Powers Resolution, the President sent a new letter to Congress stating that the U.S. role in Libya operations, “has become more limited,” and consists of, and I’m quoting here, “non-kinetic support to the NATO-led operation, air strikes in support of the no-fly zone, and since April 23, precision strikes by unmanned aerial vehicles.”

The President also expressed support for a bipartisan Senate resolution introduced Monday by Senators Kerry, and McCain, and five others. That measure expresses the sense of the Senate in support of “the limited use of military force by the United States in Libya as part of the NATO mission” and calls on the President to submit to Congress a detailed description of U.S. policy objectives and plans in Libya. It is not a formal authorization for the use of force in Libya pursuant to the War Powers Resolution.

The measures introduced by today’s panelists would take a more Congress-centered approach to the Libya campaign.

Mr. Rooney’s resolution, House Concurrent Resolution 32, expresses the sense of Congress that the President should obtain statutory authorization for the use of force pursuant to the War Powers Resolution.

The bill introduced by Mr. Amash, H.R. 1212, would cut off funding for the use of force in Libya until it is authorized by Congress.

And Mr. Gibson’s bill, H.R. 1609, would revise the text of the War Powers Resolution, replacing its current congressional procedures with a shorter provision tied more directly to Congress’ power of the purse.

Regardless of where one comes down on war powers issues, and whether the administration requires express authority to continue its limited engagement in Libya, we can all agree that the administration must address certain critical questions that Congress and this committee have been asking for weeks.

What are the specific goals and strategic end game that our armed forces are pursuing in Libya? Are we willing to accept any role for Ghadafi in Libya’s future? Who exactly are the armed rebels and the Transitional National Council? And what safeguards are in place to insure that any U.S. assistance does not fall into the hands of those working against U.S. national security interests.

Two weeks ago, this committee favorably reported a Resolution of Inquiry seeking information from the Department of State. We will press for answers from the administration at the classified interagency briefing for members that we have scheduled for tomorrow afternoon.

I want to thank our panelists for making the time to be here today. I look forward to our discussion, and I’m now pleased to yield to my good friend, the ranking member, Mr. Berman for his opening remarks this morning. Thank you, Howard.

[The prepared statement of Chairman Ros-Lehtinen follows:]



Remarks of the Honorable Ileana Ros-Lehtinen
Chairman, Committee on Foreign Affairs
Hearing on: "War Powers, United States Operations in
Libya, and Related Legislation"
May 25, 2011

We meet today as part of our continuing oversight of the United States involvement in Libya, to hear from our non-Committee colleagues who have introduced legislation on War Powers and on authorities relating to the use of force to address the situation in Libya. The Committee will continue our efforts tomorrow morning at the House-wide Members briefing with legal experts. That briefing had to be rescheduled from May 12th, due to House floor votes.

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- What are the specific goals and strategic end-game that our Armed Forces are pursuing in Libya?
- Are we willing to accept any role for Qaddafi in Libya's future?
- Who exactly are the armed rebels and the Transitional National Council?
- And what safeguards are in place to ensure that any U.S. assistance does not fall into the hands of those working against U.S. national security interests?

Two weeks ago, this Committee favorably reported a resolution of inquiry seeking information from the Department of State. We will press for answers from the Administration at the classified, interagency briefing for Members that we have scheduled for tomorrow afternoon.

I want to thank our panelists for making the time to be here today. I look forward to our discussion. I now turn to the Ranking Member, Mr. Berman, for any opening remarks he may have.

Mr. BERMAN. Thank you very much. It's good to be your good friend. I don't know if Mr. Rooney still is. Thank you, Madam Chairman.

The President commenced combat operations in Libya to prevent a humanitarian catastrophe at the hands of Ghadafi's forces. There was bipartisan support for this effort, and I believe the President prevented massive loss of life through the decisive use of force.

I continue to believe the mission is relevant and necessary. Ghadafi must be removed in order for Libya to have a chance to transition to humane governance and democracy. His indiscriminate use of force against civilians underscores the importance of the U.N. resolution that provides the basis for the NATO action.

For these reasons, I support the draft Senate resolution introduced by Senators McCain and Kerry, which expresses support for the limited use of force in Libya.

I believe efforts to either terminate funding for this effort or force an immediate withdrawal of forces would reverse to disastrous effect the very meaningful progress already made in Libya. It's time

to end the stalemate decisively, and that can't be stopped. That can't be done by stopping now.

I'd like to give the President limited time to pursue this mission. To do otherwise would be, once again, to invite a horrible massacre of Libya civilians. But underlying it is a central legal question.

The War Powers Resolution acknowledges the President may introduce forces into hostilities unilaterally for a period of up to 60 days. That may not be what the Constitution originally envisioned or consistent with a strict reading of congressional authority, but it is what Congress by the terms of that War Powers Act presumed; that, in effect, they were amplifying that provision of the Constitution.

The courts, of course, have not been willing to get into this dispute between the Executive and the congressional powers in this area.

Now that the 60 days has run, we must evaluate the specifics of ongoing combat operations to determine whether these activities still meet the War Powers Act standard of engagement in hostilities, thereby necessitating a formal authorization for the use of force. This is a threshold question.

When the administration commenced operations in March, the President unambiguously to my way of thinking introduced forces into hostilities. The U.S. was directly striking targets in Libya, providing intelligence support, and deploying forces off the coast of Libya. Is this still the case?

The President has transferred control of this operation to NATO, and the U.S. involvement is more limited than it was before.

There is a fascinating article in today's New York Times that lays out some of the specific aspects we are still involved in. And the threshold question for us here is whether U.S. armed forces have slipped below that threshold of hostilities obviating the need for congressional action.

A couple of days ago I thought we might have. As I read the New York Times article and get more information on what we're doing now, I'm much less sure of that conclusion.

We can argue theory here. This is—we need to take a close look at exactly what the President is doing in order to evaluate the War Powers Resolution threshold for termination.

For example, could one argue that periodic drone strikes do not constitute introducing forces into hostilities? Since the strikes are infrequent, there are no boots on the ground.

Simultaneously continued and sustained targeting of a foreign country, regardless of the weapon system, could—might well meet the resolution's definition of introducing armed forces into hostilities.

There are no black and white answers here, and I look forward to our witnesses' views on these complex questions. But I do want to say, I read the testimony of our three colleagues' legislation and their approach to this, and they are raising fundamental questions. But before we get too quick about railing about the executive branch, we have to look at ourselves and come to terms with what we are willing to do to exercise the authorities that the Constitution gave us. And we have the power within this institution to make that effort, to have an academic discussion of attacking the

President, whether he's exceeding his Article II powers when we aren't willing to exercise our Article I powers is a funny approach to take.

And with that, I yield back, and thank the chairman for calling this hearing.

Chairman ROS-LEHTINEN. Thank you very much, Mr. Berman.

Mr. Gallegly of California is recognized for 2 minutes.

Mr. GALLEGLY. In the interest of time, I would yield.

Chairman ROS-LEHTINEN. Thank you. Mr. Manzullo, Subcommittee on Asia and the Pacific chairman is recognized for 2 minutes.

Mr. MANZULLO. Thank you.

My big concern is the President is currently following the lead of NATO, the Arab Union, the Arab League, and the U.N. to the exclusion of the United States Congress, believing that if he can get the blessings of one or more of those organizations, he doesn't need the imprimatur of—or any input from the elected representatives of this country.

What's bothersome is boots on the ground are not the test. Drones in the air could wipe out a lot more than boots on the ground. What's particularly bothersome is the day that Secretary Clinton announced \$20 million in non-lethal humanitarian aid stressing that no weapons were being given to the opposition, to Ghadafi. The very next day, the President announced that he was sending in the drones.

This is ridiculous. Syria—more people have been killed in Syria than all the other Arab nations together that are involved in the Arab uprising this spring, and yet still with the sanctions against Syria, it's nothing compared to what the President has decided to do, unilaterally, on his own with regard to Libya.

So, I commend the three of you. I'm looking for any and all solutions so that the United States does not get involved in these unilateral wars, unless absolutely necessary, and pursuant to the terms of the War Powers Act.

Chairman ROS-LEHTINEN. The gentleman yields back.

Mr. Sherman is recognized for 2 minutes.

Mr. SHERMAN. Thank you.

The State Department is working hard to bring the blessings of democracy and the Rule of Law to every country, except ours. Rome was built with legislative decision making. Rome declined and failed under an Imperial Executive.

We probably should authorize some action with regard to Libya. Although I've got a lot of questions the administration doesn't need to answer, because they view us as irrelevant. But any authorization should be limited as to time and scope so that we can then pass additional resolutions with further review.

Any authorization should be conditioned on the Libyan rebels expelling from their midst those with American blood on their hands, those who fought us in Afghanistan and Iraq. And, particularly, the Libyan Islamic fighting group.

And, finally, I would want to see any resolution require that this mission be funded by the assets that Ghadafi was stupid enough to leave in the United States, which have been seized by the U.S. Treasury.

The administration takes the extremist view that the Executive can deploy any amount of American force anywhere, anytime, for any purpose, for any duration, with any effect, with only the most cursory discussions with a few Members of Congress.

Worse than that, they won't even articulate that view, they won't even acknowledge the 60th day, and the day on which they began violating the law. But as the ranking member points out, the fault is also here with Congress. So many of us would like to evade the tough decisions. Democrats and Republicans know how to vote on contentious issues because they come from Democratic and Republican districts. But this is one that crosses party lines, this is one that divides every one of our districts, and a lot of people would just as soon duck the issue. That's not our job.

We should put in every appropriations bill that the expenditure of funds in violation of the War Powers Act constitutes a theft of taxpayer money.

I tried with a few to get congressional leadership of both parties to put in the CR that no money could be spent in violation of the War Powers Act. We got no response. It's time for Congress to step forward. It's time to stop treading the U.S. Constitution in a presumed effort to bring democracy and Constitutional Rule of Law to Libya. I yield back.

Chairman ROS-LEHTINEN. Thank you, Mr. Sherman.

Judge Poe, the Subcommittee on Oversight and Investigation vice chair is recognized for 2 minutes.

Mr. POE. Thank you, Madam Chair. I appreciate other members being here, especially those of you who have served in our military.

There's no question about it, Muammar Ghadafi is a bad guy. He's an outlaw. But there are a lot of rulers who are bad guys and outlaws. Now, is it the United States omnipotent power and decision making that we will trot around the world and eliminate who we think, more specifically who the administration thinks, is a bad guy, and has to go?

Abraham Lincoln said, "Kings have always been involved in impoverishing people in wars, pertaining generally, if not always, that the good of the people was the object."

Madison to Jefferson, "The Constitution supposes what history of all governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it." And accordingly, with study care vested the question of war with our legislature.

Washington, "The Constitution vests the power of declaring war with Congress. There is no offense expedition of importance can be undertaken until after they've deliberated on the subject, and authorized such a measure."

Well, we have not authorized this war. The War Powers Act; the administration has not complied with the War Powers Act. Secretary Gates has said, "This is not in our national security interest that we drop bombs in Libya. Therefore, there is no national emergency created by an attack on the U.S., the territories, or our armed forces."

So, the Constitution doesn't authorize it, the War Powers Act doesn't authorize this war in the name of humanity in Libya, and it is the responsibility of Congress and, I agree with the ranking

member, it is our duty as Members of Congress to rein this war in and control the purse strings. And I don't think it's appropriate for Congress to declare war after war has already started. We should be involved before any war takes place, including war in the name of humanity.

I will yield back my time.

Chairman ROS-LEHTINEN. Thank you so much.

Mr. Chandler of Kentucky yields back. Mr. Rivera of Florida is recognized for 2 minutes. He's out. Ms. Ellmers of North Carolina is recognized for 2 minutes.

Ms. ELLMERS. Thank you, Madam Chairman.

I just want to say that I'm very much looking forward to the testimony that my colleagues are offering today. Thank you so much for being here and for sharing this, and your service to our country.

Chairman ROS-LEHTINEN. Thank you. Ms. Ellmers yields back. Mr. Burton of Indiana is recognized for 2 minutes.

Mr. BURTON. I have the War Powers Act right here, and the President has not complied with it. It says, "The President in every possible instance shall consult with Congress before introducing United States armed forces into hostilities."

If you read this thing, you know he violated the War Powers Act. And today, I was watching television with—a new conference with the British Prime Minister and the President, and the President indicated we—he's talking about Libya, he keeps saying, "We are all together," and "We are going to continue to do this. We are involved in this conflict."

He has received no authorization whatsoever from the Congress of the United States, and it's in violation of the War Powers Act and the Constitution.

Why are we not in the Ivory Coast? Thousands of people have been killed or are being killed there. Why are we not in Syria? You know, you could pick all kinds of places, as Mr. Poe said, around the world where we could get involved if we wanted to for humanity purposes, humane purposes. I mean, why don't we just get involved everywhere?

The President is not a king, and he shouldn't act like a king. The legislative branch of the Government of the United States should be informed and involved in any decision that involves military action. And we were ignored. We should not be ignored, and I think that we ought to pull in the purse strings, cut off the purse strings as quickly as possible legislatively, and stop this thing, and leave it up to those who want to fight a war over there.

Chairman ROS-LEHTINEN. Thank you, Mr. Burton.

Ms. Schmidt of Ohio is recognized for 2 minutes.

Ms. SCHMIDT. Thank you, Madam Chair.

I'm glad that Congressman Burton pointed out the significance of the War Powers Act, because, Madam Chair, as we all know, on March 21, 2011, without consulting Congress, President Obama committed troops to combat operations in Libya as part of a coalition of nations seeking to prevent a humanitarian crisis.

Today, sitting next to the Prime Minister of England, he continued to say that we are going to be involved in this conflict. Madam Chair, you know as well as I do, as well as this great nation, that

it has been 60 days since the President has committed military action in Libya, and has yet to ask for our permission.

My concern is three-fold. First, the security and the safety of our troops. Second, the security and safety of our nation. And, third, the economic cost of this conflict.

As Congressman Poe so eloquently said, as Congressman Sherman so eloquently said, as Congressman Burton and everyone else, practically, so eloquently said, there are many other conflicts around the world that we could be involved in, because they are harming their own citizens. Why did we pick Libya?

We've never been asked for permission to do this. We are a nation that has economic issues domestically. We have to tighten our belt, and now are in Libya with no exit plan, no strategy for winning. And I want to know what the cost is, both economically, the cost to our military, and the security and safety of our men and women on the battlefield, and the men and women here at home. Thank you.

Chairman ROS-LEHTINEN. Thank you, Ms. Schmidt.

Mr. Chabot, Subcommittee on the Middle East and South Asia chairman is recognized for 2 minutes.

Mr. CHABOT. Thank you, Madam Chair. First of all, I want to thank you for holding this hearing. I also want to say something that I don't say too often in this committee, and I think the gentleman has just left, but I'd like to associate myself with most of the remarks that I heard from the gentleman from California, Mr. Sherman here. I have many of the same concerns that he did.

One common characteristic that unites, or will unite many of the questions that will be raised here today is just that, that they're questions. The fact of the matter is that we're sitting here today, we know far too little about the nature of the operation in Libya. Even the most basic questions about what our objectives are, or how exactly the administration supposes that we will achieve them are completely unknown, have been unrelated to the United States Congress.

No plans have been presented here. No time line has been offered, no contingencies have been discussed. I'm left to believe one of two possible conclusions; either the administration has no plans at all, or they have not felt the need to inform the United States Congress of them. Either way that you cut it, we have serious problems on our hands.

It's ridiculous that Congress was not consulted before this operation. But that aside, we need serious answers, and we need them now.

I just got back from Iraq a couple of days ago, and Saudi Arabia, and from Egypt about 1 month ago, and Israel, and the Middle East is far too important an area, Northern Africa, as well, for the administration to take action as it has in this particular instance, and not include the United States Congress.

And I believe that the administration would have gotten considerable support from the Congress. We are, after all, the representatives of the people. The people should have been involved in this decision process. And, as I said, we need answers, we need them now. And I yield back.

Chairman ROS-LEHTINEN. Thank you so much.

Ms. Buerkle of New York is recognized.

Ms. BUERKLE. Thank you, Madam Chairman. And thank you for holding this very important hearing today.

I look forward to hearing the testimony from my three colleagues. And I thank them for helping us to insure that the American people are engaged and are consulted before we send our men and women off in harm's way. So, thank you very much. I very much look forward to hearing your testimony.

I yield back.

Chairman ROS-LEHTINEN. Thank you so much.

Mr. Paul of Texas is recognized.

Mr. PAUL. I thank you, Madam Chairman. I appreciate you holding these hearings.

Since World War II, we've embarked in the wrong direction. We've been fighting all these wars, and no declaration, so the War Power issue is a key issue. And, hopefully, we can get to the bottom of it, and expand this power.

But I think we get a pretty good idea about where the executive branch comes from, and I'm not so sure it would be unique for one party over the other. But the current Office of Legal Counsel to our President has said that it was necessary, it was okay to go to war to defend the credibility of the United Nations Security Council.

I think that is an outrage. We're supposed to be defending the Constitution, not the national—not the United Nations Security Council. But this is not new. We did it in Korea, we ignore it sometimes, now we ignore it in Libya. The War Powers Resolution, which was set up in '73 was supposed to curtail this.

Technically, it was deeply flawed, but it actually legalized war for 60 days, which always drifts into 90, and even our Presidents ignore that. So, this is a mess. And it's not all that complicated. Why do we complicate this for ourselves unless it's deliberate? Because we have a law, the law is called the Constitution.

We're not supposed to go to war unless there's a declaration. We've been fighting this a long time, and the American people are sick and tired of it. It's draining us, it's draining us financially. And now we're into—how many wars are we in now; Afghanistan, Iraq, Pakistan, now Libya. We don't even know to the extent to what—how much we're involved in these countries.

So, we in the Congress demand, or should demand our responsibilities again. It should be up to us when we go to war, and not to the executive branch.

I yield back.

Chairman ROS-LEHTINEN. I did not know if that was a pregnant pause to lead up to a crescendo.

Mr. PAUL. It was really pregnant.

Chairman ROS-LEHTINEN. Thank you, Dr. Paul. And Mr. Smith yields back his time.

And now we're so pleased to recognize our witnesses. Let me introduce them. Congressman Justin Amash, who represents Michigan's Third Congressional District, sits on the Budget Committee, and on the Committee of Oversight and Government Reform where he serves as vice chair of the Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy.

Mr. Amash is the author of H.R. 1212, the Reclaim Act, which he will discuss with us this morning.

Also joining us is my friend, Congressman Tom Rooney from Florida's 16th District, and he is the author of House Concurrent Resolution 32.

In addition to his service on the Armed Services and Intel Committees, Mr. Rooney is chairman of the Agriculture Subcommittee on Livestock, Dairy, and Poultry. A former Assistant Attorney General in Florida, Congressman Rooney also taught constitutional and criminal law at the United States Military Academy at West Point. Mr. Rooney also served in the U.S. Army Judge Advocate General (JAG) Corps as an attorney. And he's a University of Miami Law School grad.

Congressman Chris Gibson, welcome. He represents the 20th District of New York. He serves on the House Armed Services Committee, and the Committee on Agriculture. He is the author of House Resolution 1609, the War Powers Reform Act.

In addition to holding a Ph.D. in government from Cornell University, Mr. Gibson is a seasoned combat veteran, and a retired colonel with the U.S. Army, who served four combat tours in Iraq, was decorated with two Legions of Merit, four Bronze Star medals, and the Purple Heart.

Thank you so much. It is an honor to have all three of you with us today. As noted before, all of your statements will be made a part of the record. And I'll ask you to summarize your remarks.

And Mr. Amash needs to leave after his remarks, but Congressmen Rooney and Gibson have agreed to stay and take questions from our committee members.

So, we will begin with Congressman Amash, because he's got other duties. Thank you so much.

STATEMENT OF THE HONORABLE JUSTIN AMASH, MEMBER OF CONGRESS

Mr. AMASH. Thank you, Chairman Ros-Lehtinen, and committee members for holding this hearing and inviting me to testify on this important and timely topic. It's an honor to be here.

The Constitution vests Congress with the power to declare war. We are at war in Libya. Either Congress must authorize our strikes against Libya, or Congress must withdraw the use of force. What Congress cannot do is to continue standing by idly as our constitutional war powers are disregarded.

The founders distributed the decision to go to war between the two political branches to assure that the decision will be made carefully. The founding generation experienced the hardship of several wars, and they knew wars' human and financial costs. They understood that a strong Executive, who is already given the title Commander-in-Chief, might flex the country's military strength injudiciously.

Giving Congress the essential power to declare war allows heads to cool, alternatives to be considered, and makes certain there is consensus if the country is called to fight.

If Congress' authority to declare war has any content, at minimum it must prevent the Executive from starting an offensive war without Congress' consent.

President Obama once held this view. As a candidate, he told the Boston Globe, "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."

In 1973, Congress codified this constitutional understanding in the War Powers Resolution. The law allows the President to introduce the armed forces into hostilities in only three circumstances pursuant to (1) a declaration of war; (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Congress has not declared war or authorized use of force against Libya. And, of course, Libya has not attacked us. The undeniable conclusion is that the President is breaking the law by continuing the unilateral offensive war against Libya.

The administration has tried to paper over its legal actions by first consulting with Congress. The War Powers Resolution does require the President to consult with Congress in every possible instance before introducing the armed forces into hostilities, and regularly during a military engagement.

I appreciate consultations as much as the next Member of Congress, but letters and phone calls from the White House cannot substitute for the constitutional requirement that Congress act. With pressure from the public and some Members of Congress building, the President signaled on Friday that he now supports Congress' authorizing the war.

Anyone concerned about constitutional war powers should read the President's letter to Congress carefully. The President voiced support for a Senate resolution on Libya that was not public at the time. However, the President stated, "The purpose of the resolution was to confirm that Congress supports the U.S. mission in Libya."

Congress has passed almost no legislation regarding Libya. We have not even approved supplemental funding for the \$1 billion war, so I'm not sure why the President believes we merely should confirm our support for the war.

Whether or not the President actually asked for authorization of force, the larger question Congress must ask itself is, why have we waited for the President's request? The country has been at war for 67 days, and we have neither authorized force, nor ordered force to be withdrawn. There is no greater sign that Congress' constitutional muscles have atrophied than the fact that we only became interested in authorizing the war after the President told us to do so.

I wrote H.R. 1212, the Reclaim Act, to require the President to obtain Congress' specific authorization before continuing military action against Libya. My bill's requirement of specific authorization tracks language in the War Powers Resolution, and the Constitution's mandate that the legislature and Executive agree before the country wages offensive war.

The President's orders to strike Libya are outlawed by the War Powers Resolution. His unilateral decision to take us to war violates the Constitution. The tragedy for our system of self-government would be if Congress continued to do nothing.

Pass the Reclaim Act to require the President to obtain congressional authorization before continuing the strikes. Thank you.
[The prepared statement of Mr. Amash follows:]

**“War Powers, United States Operations in Libya, and Related Legislation”
House Committee on Foreign Affairs, May 25, 2011
Rep. Justin Amash**

Thank you Chairman Ros-Lehtinen for holding this hearing and inviting me to testify on this important and timely topic. It is an honor to be here.

The Constitution vests Congress with the power to “declare war.” We are at war in Libya. Either Congress must authorize our strikes against Libya, or Congress must withdraw the use of force. What Congress cannot do is to continue standing by idly as our constitutional war powers are disregarded.

The Founders distributed the decision to go to war between the two political branches to assure that the decision would be made carefully. The founding generation experienced the hardship of several wars and they knew war’s human and financial costs. They understood that a strong executive who is already given the title “Commander in Chief,” might flex the country’s military strength injudiciously. Giving Congress the essential power to declare war allows heads to cool, alternatives to be considered, and makes certain there is consensus if the country is called to fight.

If Congress’ authority to declare war has any content, at minimum it must prevent the executive from starting an offensive war without Congress’ consent. President Obama once held this view. As a candidate, he told the *Boston Globe*, “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.”

In 1973, Congress codified this constitutional understanding in the War Powers Resolution. The law allows the President to introduce the Armed Forces into hostilities in only three circumstances: pursuant to “(1) a declaration of war, (2) specific statutory authorization, or

(3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”

Congress has not declared war or authorized use of force against Libya. And, of course, Libya has not attacked us. The undeniable conclusion is that the President is breaking the law by continuing the unilateral, offensive war against Libya.

The administration has tried to paper over its illegal actions by first consulting with Congress. The War Powers Resolution does require the President to consult with Congress “in every possible instance” before introducing the Armed Forces into hostilities and “regularly” during a military engagement. I appreciate consultations as much as the next Member of Congress. But letters and phone calls from the White House cannot substitute for the constitutional requirement that Congress act.

With pressure from the public and some Members of Congress building, the President signaled on Friday that he now supports Congress’ authorizing the war. Anyone concerned about constitutional war powers should read the President’s letter to Congress carefully. The President voiced support for a Senate resolution on Libya that is not public and may not even be written yet. From the President’s description, the purpose of the resolution is not clearly to authorize force, but to “confirm that the Congress supports the U. S. mission in Libya.” Congress has passed almost no legislation regarding Libya—we even have not approved supplemental funding for the \$1 billion war—so I am not sure why the President believes we merely should “confirm” our support for the war.

Whether or not the President actually is asking for authorization of force, the larger question Congress must ask itself is: why have we waited for the President’s request? The country has been at war for 67 days and we have neither authorized force nor ordered force to be

withdrawn. There is no greater sign that Congress' constitutional muscles have atrophied than the fact that we only became interested in authorizing the war after the President told us to do so.

I wrote H.R. 1212, the RECLAIM Act, to require the President to obtain Congress' specific authorization before continuing military action against Libya. My bill's requirement of specific authorization tracks language in the War Powers Resolution and the Constitution's mandate that the legislature and executive agree before the country wages offensive war.

The President's orders to strike Libya are outlawed by the War Powers Resolution. His unilateral decision to take us to war violates the Constitution. The tragedy for our system of self-government would be if Congress continued to do nothing. Pass the RECLAIM Act, to require the President to obtain congressional authorization before continuing the strikes.

Thank you.

Chairman ROS-LEHTINEN. Thank you so much, and we are honored by your presence. We'll look at your legislation. We understand you have other duties. Thank you so much.

So pleased to recognize my colleague from Florida, Mr. Rooney.

STATEMENT OF THE HONORABLE THOMAS ROONEY, MEMBER OF CONGRESS

Mr. ROONEY. Thank you, Chairman Ros-Lehtinen, Ranking Member Berman, and members of the committee. Thank you for the privilege to appear before you today, and for holding this hearing.

As a former professor of Constitutional Law at West Point, I have tremendous respect for our founding fathers and the roles regarding military engagement they assigned to the executive and to the legislative branches. I am not here to debate the constitutionality of the War Powers Resolution, and will leave that to the Supreme Court.

However, before discussing the President's adherence to the War Powers, or lack thereof, I think it's important to discuss the general concept of how the United States goes to war.

Article I Section 8 vests in Congress the power to declare war, raise and support the armies, and to make all laws necessary and proper for the execution of these powers, while Article II Section 2 establishes the President's role as Commander-in-Chief. The framer's intent is clearly for two branches to work flexibly and in tandem.

Congress' true check on Executive authority is its power of the purse, and raising of armies. I think it's fair to say the United States would not have a military for the President to command without the structure and funding that Congress authorized to create it.

Now, let's fast-forward to November 1972. The opposition to the war in Viet Nam was at its height, and that year's election brought a Democratic Majority to the both chambers. The following year, Congress passed the War Powers Resolution overriding President Nixon's veto. Operating under its constitutional authority, Congress essentially asserted, "If you're going to go to war and send our troops into harm's way, you need us and the American people on board."

Thus, if the President and Congress must agree on war fighting, then the United States will enter into fewer wars, and the conflicts we do enter will only occur after sufficient reason and deliberation.

The War Powers Resolution requires the President to notify Congress within 48 hours of committing armed forces to military action, and forbids armed forces from remaining for more than 60 days without an authorization of the use of military use, or a declaration of war.

When President Obama first announced his decision to join our NATO allies and intervene in Libya, he operated within War Powers, and notified Congress of that decision within 48 hours. However, on May 20th, 2011, Day 60 of the United States' engagement in Libya, the President waited until late in the evening to send a letter to Congress in a futile attempt to obtain our support for the efforts in Libya. The President again refused to make his case to Congress, requesting we simply endorse a carte blanche resolution supporting limited efforts such as this in Libya.

Obama's intent to engage is clear. Outlined in an April memo out of the Department of Justice, the administration argued that the hostilities are of limited nature, scope, and duration; and, thus, do not rise to the level of war. Instead, the administration preferred to describe our engagement with a more redundant euphemism, "kinetic military action."

Neither the War Powers Resolution, nor the Constitution provides any illusion that if an act of war is small, or led by NATO, then it is not an act of war. This flies in the faces of Obama's own words, as Representative Amash previously stated when he said in 2007, "The President does not have the 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." To date, it has been 65 days since the President has been acting unilaterally without Congress, 5 days longer than permitted by law.

My bill, House Concurrent Resolution 32, expresses the sense of Congress that the President should adhere to the War Powers Resolution, and obtain specific statutory authority—authorization for the use of United States armed forces in Libya. My resolution does not speak to whether or not military action is or is not warranted. It may very well be, but rather that the President make the case to Congress to allow the Congress to debate it; and, thus, determine at some point if we are on board.

What we're asking for is simple, that the President respect our role in the spirit of the Constitution, the separation of powers, and the Rule of Law.

Thank you for this opportunity to discuss my legislation, and I welcome questions the members may have.

[The prepared statement of Mr. Rooney follows:]

**Statement of the Honorable Thomas J. Rooney
Before the Committee on Foreign Affairs
“War Powers, United States Operations in Libya, and Related Legislation”
May 25, 2011
2172 Rayburn House Office Building, 10:30 a.m.**

Chairman Ros-Lehtinen and Members of the Committee, thank you for the privilege to appear before you today and for holding this hearing.

As a former professor of constitutional law at West Point, I have tremendous respect for our Founding Fathers and the roles regarding military engagement they assigned to the Executive and Legislative branches. I am not here to debate the constitutionality of the War Powers Resolution, and will leave that to the Supreme Court. However, before discussing the President’s adherence to War Powers—or lack thereof—I think it’s important to discuss the general concept of how the United States goes to war.

Article I Section 8 vests in Congress the power to declare war, raise and support armies, and to make all laws necessary and proper for the execution of these powers, while Article II Section 2 establishes the President’s role as Commander in Chief. The Framers’ intent is clearly for the two branches to work flexibly and in tandem. Congress’ true check on executive authority is its power of the purse and raising of armies. I think it’s fair to say the United States would not have a military for the President to command without the structure and funding that Congress authorized to create it.

Now let’s fast forward to November 1972. The opposition to the War in Vietnam was at its height and that year’s election brought a Democratic majority to both chambers. The following year, Congress passed the War Powers Resolution, overriding President Nixon’s veto. Operating under its constitutional authority, Congress essentially asserted “if you’re going to go to war and send our troops into harm’s way, you need us, and the American people, on board”. If the President and Congress must agree on war-fighting, then the United States will enter into fewer wars—and the conflicts we do enter into will only occur after sufficient reason and deliberation.

The War Powers Resolution requires the President to notify Congress within 48 hours of committing armed forces to military action and forbids armed forces from remaining for more than 60 days—with a further 30 day withdrawal period—without an authorization of the use of military force or a declaration of war.

When President Obama first announced his decision to join our NATO allies and intervene in Libya, he operated within War Powers and notified Congress of that decision within 48 hours. At that point, I was pleased and hopeful that since the President recognized one responsibility under the Resolution, he would follow suit and come to us in Congress for authorization of continued operations in Libya.

However, on May 20, 2011, day 60 of the United States’ engagement in Libya, the President waited until late evening to send a letter to Congress. In a futile attempt to obtain our support for

the efforts in Libya, and effectively bending the rules of War Powers, the President again refused to make his case to Congress and abbreviated our involvement in the region, requesting we simply endorse a Resolution supporting “limited efforts such as this” in Libya. The President’s refusal to honestly assess the situation in Libya has pervaded throughout the past 60 days.

Outlined in an April memo out of the Department of Justice, the Administration argued that the hostilities are of limited nature, scope and duration, thus they do not rise to the level of a “war”. Instead, the Administration preferred to describe our engagement with a more redundant euphemism—“kinetic military action”. Neither the War Powers Resolution, nor the Constitution, provides any allusion that if an act of war is “small”, then it is not an act of war.

The truth is the United States has committed its resources, including funding, to NATO operations. Our Armed Forces have committed air strikes as recently as April, and our intelligence community is actively involved in this fight.

This flies in the face of Obama’s own words in 2007 when he stated to the Boston Globe, “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.”

My bill, H.Con.Res. 32, expresses the sense of Congress that the President should adhere to the War Powers Resolution and obtain specific statutory authorization for the use of United States Armed Forces in Libya. My resolution doesn’t speak to whether or not military action is or is not warranted, but rather that the President make the case to Congress; to allow Congress to debate it, and thus determine at some point if we’re on board. What we’re asking for is simple—that the President respects our role, in the spirit of the Constitution, separation of powers, and the rule of law.

Excuses, including those rhetorical, for ignoring the law of the land, and continuing to commit our nation’s resources to the efforts in Libya, are both weak and irresponsible. Whatever the scope of the fight, our Armed Forces deserve, at the very least, a conversation between the President and Congress to explain why it’s critical we send them into harm’s way. I would encourage the President to follow in the words of candidate Obama, obey the law and respect our Founding Fathers’ efforts to provide our nation with the checks and balances necessary for effective military engagement.

Thank you for this opportunity to discuss my legislation and I welcome any questions the members of this Committee may have.

Chairman ROS-LEHTINEN. Thank you so much, Mr. Rooney.
Mr. Gibson.

**STATEMENT OF THE HONORABLE CHRISTOPHER GIBSON,
MEMBER OF CONGRESS**

Mr. GIBSON. Well, I’d like to begin by thanking the chairwoman, the ranking member, and members of the committee for holding this hearing. I sincerely appreciate the opportunity to come before the committee to address what I believe is a pressing issue facing our country today.

While the debate over Presidential war powers has resurfaced as a result of the ongoing operations in Libya, as those assembled here today know full well, the ambiguity surrounding this issue has been the source of controversy for decades despite, and perhaps in spite of the War Powers Act passed over the President’s veto in 1973.

While it is somewhat encouraging that in recent days the President has taken steps to obtain congressional approval, it’s unclear

why he waited until the 60-day period had passed, and why he sought approval from several international organizations prior to the mission, but failed to consult or seek statutory authorization from Congress.

In view of the War Powers Act, I believe the President's actions are on dubious constitutional grounds, but I want to be clear. This is not a new phenomenon. Presidents from both parties have been on dubious grounds with regard to the War Powers Act, perhaps not surprising given that no President since its enactment has acknowledged its constitutionality.

It's time to bring clarity to the situation, and to resolve the matter of Presidential war powers.

As a student of history and former professor of American Government, I frequently turn to the Federalists Papers, the notes on the Constitutional Debate, and the Constitution, itself, to derive the intent of the founders. It is my belief that the founders envisioned a shared role between the executive and legislative branches with regard to war making.

Ever concerned about unchecked power, especially unchecked Executive power, the founders vested in the Congress the power to declare war. The American people would have say in the solemn decision on the use of force through their duly elected representatives, Federalist Paper 69.

The founders also envisioned energy in the Executive, Federalist Paper number 70, and the ability to defend the country, and to lead our armed forces in time of war by investing in the President the responsibilities of Commander-in-Chief.

As political scientist and Presidential historian, Richard Neustadt, noted, "The founders set up a constitutional design where separate institutions share power." Since World War II, and in part a result of the Cold War, the existential threat from the Soviet Union and the specter of nuclear war, over time these war powers have accumulated in the executive branch, this recent operation in Libya, being only the latest example of executive fiat.

It's time to restore balance to the executive-legislative branch relationship, and bring back in the voice of the American people on matters of war and use of force. It's time to reform the War Powers Act.

Recently, I introduced legislation that fundamentally amends the War Powers Act. My bill, H.R. 1609, which currently has 12 co-sponsors, including two distinguished members from this committee, Mr. Burton and Mr. Johnson, the War Powers Reform Act seeks to restore the founders' intent by clarifying when the President has the authority to deploy our armed forces into hostile circumstances.

This bill empowers the President to act under the following circumstances; declaration of war, specific statutory authorization from Congress, including obligation under treaty, a national emergency created by attack or imminent threat of attack upon any of the United States, its territories or possessions, or its armed forces.

The most significant provision in my bill is a new section regarding the limitation on the use of funds. In none of these foregoing—if none of these foregoing circumstances are met, the President may not obligate or expend funds to deploy the armed forces of the

United States. The 60–90 day provisions in the current War Powers Act are deleted.

Over the years, these provisions have proven vague, ineffective, and counterproductive to the intent of the War Powers Act. This new provision regarding prohibition of funds provides a much needed enforcement mechanism and reasserts congressional authority in both authorizing funds, as well as making war.

As seen in the current operations in Libya, the Executive currently has the ability to cost-shift with funds already appropriated, and then subsequently reprogramming or requesting funds after actions are complete. The administration's ability to do so denies the American people their voice in authorizing military action.

Among other new provisions added by my bill, Section 2(c) of the War Powers Act is amended to allow Presidential action if the nation is under imminent threat of attack, something absent in the original bill. In this instance, imminent threat is defined as credible intelligence that a hostile force is about to attack our country.

Other changes to the War Power Act include the elimination of antiquated reporting requirements, which are no longer needed, because the Executive would be prohibited from acting without first seeking congressional authorization.

Finally, the War Powers Reform Act contains an exemption for the State of Israel in the event that they are attacked. Thus, in essence, a vote for this bill is tantamount to providing the Executive with the authority to defend one of our closest and most vulnerable allies.

To date, the United States does not have a Senate confirmed mutual defense treaty with Israel. While it is virtually impossible to foresee events and threats in a constantly evolving world, the need to immediately defend one of our greatest partners is one we can envision.

In conclusion, while this bill responds to the situation in Libya, the broader intent is to restore balance to the executive-legislative branch relationship on matters of war power.

Regardless of where you stand in relation to the operation in Libya, you should support this bill to insure the American people have a say regarding when this nation goes to war.

I look forward to dialoguing with the committee, and I urge in the aftermath of this hearing that you move to markup on this bill. I'm certainly open to amendment, and look forward to your thoughts on that score. Our country needs the War Powers Reform Act.

Again, thank you for the opportunity to be with the committee, and I look forward to your questions and comments.

[The prepared statement of Mr. Gibson follows:]

Testimony of Rep. Chris Gibson (NY20)
House Committee on Foreign Affairs

“War Powers, United States Operations in Libya, and Related
Legislation”

Wednesday, May 25, 2011

I would like to begin by thanking the Chairwoman, the Ranking member, and members of the Committee for holding this hearing. I sincerely appreciate the opportunity to come before the Committee to address what I believe is a pressing issue facing our country today.

While the debate over Presidential War Powers has resurfaced as a result of the ongoing operations in Libya, as those assembled here today know full well, the ambiguity surrounding this issue has been a source of controversy for decades, despite (and perhaps in spite of) the War Powers Act passed over the president's veto in 1973.

Last Friday marked 60 days since the administration began operations in Libya and we are now not in compliance with the War Powers Act. While it is somewhat encouraging that in recent days the President has taken the steps to obtain Congressional approval, it is unclear why he waited until the 60-day period had passed, and why he sought approval from several international organizations prior to the mission, but failed to consult or seek statutory authorization from Congress.

In view of the War Powers Act, I believe the President's actions are on dubious constitutional grounds but I want to be clear, this is not a new phenomenon. Presidents from both parties have been on dubious grounds with regard to the War Powers Act, perhaps not surprising given that no President since its enactment has acknowledged its constitutionality. It's time to bring clarity to the situation and to resolve the matter of Presidential War Powers.

As a student of history and former professor of American Government, I frequently turn to the Federalist Papers, the Notes on the Constitutional Debate, and the Constitution itself to derive the intent of our Founders. It is my belief that the Founders envisioned a shared role between the Executive and Legislative branches with regard to making war. Ever concerned about unchecked power, especially unchecked executive power, the Founders invested in the Congress the power to declare war. The American people would have say in the solemn decision on use of force through their duly elected Representatives (Federalist Paper # 69). The Founders also envisioned "energy in the executive" (Federalist Paper # 70) and the ability to defend the country and lead our armed forces in time of war by investing in the President the responsibilities of commander-in-chief. As political scientist and presidential historian Richard Neustadt noted, the Founders set up a constitutional design where "separate institutions shared power."

Since World War II, and in part as a result of the Cold War, the existential threat from the Soviet Union and the specter of nuclear war, over the time these war powers have accumulated in the executive branch, this recent operation in Libya being only the latest example of executive fiat. It's time to restore balance to the executive-legislative branch relationship and bring back in the voice of the American people on matters of war and use of force. It's time to reform the War Powers Act.

The War Powers Reform Act:

Recently, I introduced legislation that fundamentally amends the War Powers Act (WPA). My bill, H.R. 1609, the *War Powers Reform Act*, strikes a new balance between the

Legislative and Executive branch, and returns our Republic to a point the Founders intended, where the two branches share responsibility regarding the use of force.

Seeking to restore the Founders' intent, this legislation amends the War Powers Act to clarify when the president has the authority to deploy our armed forces in to hostile circumstances. The bill empowers the President to act under the following circumstances: a declaration of war; specific statutory authorization from Congress, including obligation under a treaty (as previously agreed to by Act of Congress); a national emergency created by attack, or imminent threat of attack upon any of the United States, its territories or possessions, or its armed forces.

The most significant provision in my bill is a new section regarding the limitation on the use of funds. If none of these foregoing circumstances are met, the President may not obligate or expend funds to deploy the armed forces of the US. The 60/90 day provisions in the current WPA are deleted. Over the years these provisions have proven vague, ineffective and counter-productive to the intent of the WPA. This new provision regarding prohibition of funds provides a much-needed enforcement mechanism and reasserts Congressional authority in both authorizing funds as well as making war. As seen in the current operations in Libya, the Executive currently has the ability to cost shift with funds already appropriated and then subsequently reprogramming or requesting funds after actions are complete. The administration's ability to do so denies the American people their voice in authorizing military action.

Among other new provisions added by my bill, Section 2 (c) of the WPA is amended to allow Presidential action if the nation is under *imminent threat of attack*, something absent in the original bill. In this instance, imminent threat is defined as credible intelligence that a hostile force is about to attack our country. Other changes to the War Powers Act include the elimination of antiquated reporting requirements, which are no longer needed because the Executive would be prohibited from acting without first seeking Congressional authorization.

Finally, the *War Powers Reform Act* contains an exemption for the state of Israel in the event that they are attacked. Thus, in essence, a vote for this Bill is tantamount to providing the Executive with the authority to defend one of our closest and most vulnerable allies. To date, the United States does not have a Senate-confirmed mutual defense treaty with Israel. While it is virtually impossible to foresee events and threats in a constantly evolving world, the need to immediately defend one of our greatest partners is one we can envision.

In conclusion, while this Bill responds to the situation in Libya, the broader intent is to restore balance to the Executive-Legislative Branch relationship on matters of war powers. I look forward to dialoguing with the committee and urge that in the aftermath of this hearing that you move to mark-up this Bill. I am certainly open to amendment and look forward to your thoughts on that score. Our country needs this War Powers Reform Act. Again, thank you for having me before the committee, and I welcome your comments and questions.

Chairman ROS-LEHTINEN. Thank you very much, Mr. Rooney, and Mr. Gibson. And I will start the 5-minute question and answer period.

The U.S. deployment to Libya did not fall within one of the situations authorized by Section 2 of the War Powers Resolution. They were not undertaken pursuant to, (1) a declaration of war; (2) a specific statutory authorization, or (3) a national emergency created by an attack on the United States.

Do you agree with those who assert that the Obama administration is claiming unprecedented prerogatives in the use of U.S. military force even beyond those asserted by the prior administration?

And on that same theme, would your position differ if the President had acted pursuant to either, (a) a declaration of national emergency due to the threats to U.S. interests posed by the Libyan regime, or (b) an Executive Order?

Is the concern that he acted to enforce the "Writ of the International Community," or to implement the pertinent United Nations Security Council Resolutions? Mr. Gibson.

Mr. GIBSON. My concern, very succinctly put, is that the President did not come here first for authorization for any kind of military action in Libya.

I would also tell you that, in my view, it is not unprecedented. In fact, particularly since Korea, we've seen Presidents do this. And we've seen it on both sides of the aisle. Take a look at President Bush, Sr., and his actions in Panama, take a look at the No-Fly Zone after the Persian Gulf War, when he implemented that without congressional authority. And, also, President Clinton, in terms of prior authorization before commencing operations in the former Yugoslavia.

So, I want to be clear that what I'm not looking to do here is begin a political witch hunt. What I want us to do is, from the perspective of Congress, is to bring clarity to the situation. I want to see us reform the War Powers Act so going forward we can bring clarity to this situation.

This current situation really helps no one. You've got a situation where the Executive is saying we don't need congressional authority. It's certainly not helping our country. I would think that a President, regardless of party, would welcome bringing clarity to the situation with a bill that Congress, both sides of the aisle, should work with the administration to bring that kind of clarity.

I think it's important to note the historical examples. Look at the founding era. With regard to what the founders said in those founding documents, certainly, the Constitution, the Federalist Papers, the notes on the Constitution, and importantly how they lived their lives in that first generation after the enactment of these key seminal documents.

Look at 1798, when we were engaged in what President Adams said was a war with—essentially needed to take military action against France for what they were doing on the high seas. He came to the Congress for authority. He requested authority, a Federalist, somebody who believed in expansive government view.

And then you look at President Jefferson, somebody with a more limited view. In 1802, when he took action against Tripoli, he felt it was necessary to come to the Congress to first get authorization.

I think it's important to note in neither of these cases did we declare war. So, the notion that only time military forces can be used is a declaration of war, doesn't comport with the history of the first generation of our leaders after the enactment.

So, that's what I would tell you, Madam Chairwoman, that I think we need to bring clarity to the situation. I don't think it's unprecedented, but I do think it's the Congress' role now to take action going forward so we can strengthen our country.

Chairman ROS-LEHTINEN. Thank you, sir. Mr. Rooney?

Mr. ROONEY. Yes, I would agree. I think that, certainly, it's not unprecedented. What Congressman Gibson has said with regard to Kosovo, Haiti, we've heard even similar language that the President is using right now with welcoming Congress' suggestions, like we're a suggestion box. As rude as that might sound, it's the same exact language that President Clinton used before going into Haiti, or Kosovo, so the question really is, do we want to keep operating under this, us versus them mentality where the Supreme Court has had the opportunity to weigh in before, and really hasn't with this issue. So, it's really on us, I think, as was said, to clarify.

With regard to the other part of your question, in cases of emergency, I think in accordance with the War Powers Resolution, certainly, the courts have said that the Commander-in-Chief does have a responsibility to act as our point man in national security issues when it's unreasonable to assemble the Congress fast enough to deliberate and get a declaration of war.

You know, there are situations where things happen in the middle of the night in Abbottabad, Pakistan, where he needs to send in the seals, and we might not be able to get together quick enough to successfully pull that off. That's where the War Powers Resolution comes in saying fine, now you have 48 hours to notify us, 60 days to let us get our arms around it, debate it, whether or not we're on board, as I said in my testimony, or not. And if not, then you have 30 days to withdraw.

So, I think that the emergency provision is fine. I just think that we're sort of operating in this gray area right now, and it's our responsibility to figure out if we're going to keep doing that for the future, or change it.

Chairman ROS-LEHTINEN. Thank you very much, gentlemen. I'm pleased to recognize Mr. Berman for his questions.

Mr. BERMAN. Thank you very much, Madam Chairman. And I go back to a point I made in my earlier comments.

There is an aspect of all of us here that's somewhat hypocritical on this issue. And Mr. Gibson's bill, at least—I mean, the sense of Congress stuff does not fundamentally address the issue. I gather Mr. Gibson has a bill that says we've been acquiescing, we in Congress, since at least the Korean War, although I'm not sure that we didn't take some acts of war against the Barbary Pirates off Libya before the Congress ever approved that, even under Jefferson. In Jefferson's time, if I recall, there was some later congressional action. But at the time, I'm not sure he didn't do some—authorize some of our Navy, and direct them to do certain things that could be called acts of war before the Congress spoke. But we certainly have acquiesced since the Korean War.

And I take it Mr. Gibson's bill is less about Libya than making sure there are no more Libyas, or Panamas, or Grenadas, or Haitis, or Koreas, or Vietnams without a process by which the Congress has spoken at a certain point.

I am curious, so again I go back to this point. I was on the conference call, my chairman may have been, as well. I'm trying to recall exactly, when the President in response to a question from Senator Lugar said prior to the commencement of operations in Libya, that he thinks the limited role the U.S. will be playing is

within his “Article II” powers. Not a lot of challenge on that call, except perhaps from Senator Lugar to that assertion. But that’s the way he viewed it. And I know what he and others have said before they became President, and what they’ve done since President. And Congress has acquiesced.

We passed a Fiscal Year 2011 appropriations bill that didn’t contain any provision to cut off funding, or to cut off funding if no authorization is made within 60 days. There is a DOD bill now on the floor. I’m unaware of any amendment to that bill that has been made an order that cuts off funding for the Libya operation. I’m unaware of the people who control the agenda in the House setting either a resolution to authorize the use of force, or to cut off funding. So, before we point too many fingers at anybody else, we have to decide how much we want to take up.

The question, I guess, I have, I’m intrigued by Representative Gibson’s bill. In effect, are you saying that where we have a mutual defense pact, we have preauthorized the use, in a sense, the authority to engage in hostilities without a congressional action to determine whether the facts of those hostilities do exist and, therefore, meet the terms of that treaty? Because you do seem to have an exemption for your cutoff both for Israel in one section, and for countries with whom we have mutual defense treaties.

Mr. GIBSON. Well, I thank the ranking member.

What I doing is putting a highlight in an area that I don’t think the American people fully recognize, is that between 1947 and 1960, we entered into seven defense agreements where we, the American people, gave our word.

Now, when you look at the details of the treaties, for example, NATO, it does say consistent with the individual country’s constitutional provisions. So, one would expect that the administration would still come back here for authorization. But what I’m trying to raise our level of consciousness is that even though we would have a vote in accordance with our constitutional provisions we, the American people, gave our word that we were going to be involved in a defense pact.

Now, this really gets back to the founding. The founders provided stipulations for treaties and for trade agreements. They put stipulations in there. Our first President warned against the entanglements of treaties, but he never questioned the constitutionality of it.

So, the short answer to your question is that there would still be an authorization of force, but think about what that vote would mean. Think about what that vote would mean for a second, because we, the American people, gave our word. And I have the seven treaties, if the committee is interested in hearing—reviewing that for the record. But in previous times, leaders invested with our powers have given our word, so I’m just bringing that to light, because I think that needs to go into the conversation.

You know, I——

Mr. BERMAN. And the basis for the Israel exemption, where we don’t have that treaty?

Mr. GIBSON. Well, here’s the thing with regard to that question, is that when you look at the current situation here in Israel,

among our very closest allies in a precarious situation, and that we can't foresee all situations in the world.

What I'm saying is a vote for this bill is tantamount to the American people telling the Executive that we give our consent, that if Israel is attacked that you would have the authorization to move. So, the key point here is process.

MR. BERMAN. All right. Then let me just follow that up. And what about the situation where if we don't act, there is a genocide, there is a massive humanitarian catastrophe, a disaster that could involve thousands, or tens of thousands, or hundreds of thousands of people dying, should we pre-approve that situation? I mean, part of the logic of Israel is the never-again notion. Should that be incorporated into the standard?

Mr. GIBSON. I would say that the key thing to know about my bill is to know that it engages the American people in a conversation, their representatives.

Mr. BERMAN. That's what I'm trying to do, is have the conversation.

Mr. GIBSON. Well, that's right. So, the only thing I'm stipulating in this bill is to move to defend the people of Israel. Beyond that, because that's a discussion we can have at the same time we're working our way through this bill.

But with regard to any other actions, that's something that the Congress would need to be involved with, not pre-approving, but involved in discussions.

MR. BERMAN. Well, let me make sure I understand then. Your bill doesn't negate the obligation for the authorization, but what it does is, in situations not exempted provide for the automatic cutoff of funds. Is that a—

Mr. GIBSON. What this bill—

Mr. BERMAN. Absent an authorization.

Mr. GIBSON. What this bill says, sir, is that only in certain circumstances may the Commander-in-Chief move. If he does not have authority, he has to come here for authorization, or he can't obligate or expend funds.

Mr. BERMAN. But the War Powers Act, this doesn't—your bill doesn't repeal the War Powers Act. The War Powers Act gives the President in certain limited circumstances the authorization to make war for a limited period of time under those conditions if he meets certain requirements.

Mr. GIBSON. Thank you for asking that question, and to allow me to clarify. This reform act eliminates those portions of the War Powers Act. So, the 60–90 day, I think that that's been counter-productive. I think that's added to the confusion of the situation.

What this reform act says is the President either has authority to move, or he's to come here to get that authority. And if he doesn't have that authority, then he may not obligate or expend funds.

MR. BERMAN. And, so, if I want to create some conditions that you—beyond those where you've already given authority, then the argument to take your bill and amend it to include those situations, or if I don't agree with what you've exempted, to get rid of your exemptions.

Mr. GIBSON. That's a discussion we could have, absolutely, we, the Congress.

Mr. BERMAN. Yes. Thank you.

Chairman ROS-LEHTINEN. Thank you very much. Mr. Rivera is recognized.

Mr. RIVERA. Thank you, Madam Chair, for both panelists. I'm intrigued particularly because of your military experience to inquire as to what you think the difference is over history in terms of the practicality of being able to execute war. Warfare has changed a lot since the time of Adams and Jefferson, and what risks possibly could be posed or how you would respond to those that would critique your proposals by potential risk to our national security, because of expedited time frames, perhaps, that could occur in terms of jeopardy to our troops, in terms of having a drawn out conversation or discussion about some of these national security matters, or military matters. How do you respond to those that would raise those issues?

Mr. GIBSON. Well, I thank the gentleman for the question. It's certainly something near and dear to my heart. After serving our country in uniform for 24 years active, and 29 years total counting the National Guard when I was in high school and college, it's something I'm firmly committed to, now and all days forward.

But I would also tell you that what this bill does is we put in the reform act the clause, the imminent threat of attack. We put that in there so the President can respond to emerging situations to protect our country. Now, keep in mind that the founders also looked at these issues, and they certainly expected that the Commander-in-Chief would be able to be empowered to repel attack, to take actions to protect the homeland. So, I would tell you that.

And I think, also, with regard to the ranking member, something you mentioned earlier, it's important to note that when President Roosevelt came here to the Congress on the 8th of December, when he reported to the Congress he said, "I have taken actions already consistent, as the Commander-in-Chief, and I ask that the Congress declare that a state of war exists." So, I think it's important, because there's a recognition there that the Commander-in-Chief has a role, but so does the people, their representatives have a role by coming and declaring war.

Now, that's the first thing I would say, sir. And then the second thing I would say is that in particular circumstances, the Congress comes together to either authorize or not authorize action. In this case here, in this current conflict, we have authorized. We have authorized military actions against those who planned, coordinated, and conducted the attacks against our country on the 11th of September. So, there's an authorization already from the American people by way of their representatives to conduct such operations, such as the one that occurred in Abbottabad, Pakistan, as we went after Public Enemy Number One, the mastermind, the commander of the forces that attacked our country.

Mr. RIVERA. Mr. Rooney?

Mr. ROONEY. When I was referring to Abbottabad, it was simply as an example of how things, but you're absolutely right. I would certainly put that within the jurisdiction of that authorization. But with things that would occur around the world that might not fall

within the jurisdiction of that authorization, which I think is what you're sort of referring to, absolutely.

I have to say to Colonel Gibson, I haven't read his bill, so I don't want to speak to it. I'm simply speaking from my own resolution, which I know, sir, that you think that it's continuing to act hypocritical, or a sense of Congress self is just acquiescing. I've been here for 3 years. This is the first time we've gone into this territory since I've been here, and we're introducing a resolution. So, hopefully, you don't think that's acquiescing.

We're trying to, I think, do what the people sent us here to do, and that's to follow the Rule of Law, which as the Commander-in-Chief, the President of the United States, his primary goal is the chief law enforcement officer. So, if he ignores the War Powers Act, as other Presidents have, my question that I look in the mirror and say, what are you going to do about it, which results with this resolution? So, I would get back to also, though, I do believe that the 60—we could amend 60–90 day however, but I do believe, and this might be counter to what my colleague here, his proposal is saying, I think. I do believe that there are circumstances where the President, as Commander-in-Chief, should have the authority in the middle of the night to make a decision where he might not be able to get congressional approval. And I think that the War Powers Resolution addresses that by saying, but within 60 days it should be plenty of time to get our authorization to continue, and to get us on board. And I think that—my resolution simply says that, to adhere to the Rule of Law as it exists.

I think that the gentleman from New York goes beyond that, and I can't speak to that. But I certainly would be open to that, but I'm simply saying the law that we have now is being ignored. The Congress' role is basically irrelevant now unless we do something about it, and that's why I think that my resolution would request the President to adhere to the Rule of Law.

Mr. RIVERA. Mr. Gibson, did you want to follow-up?

Mr. GIBSON. Thank you very much. I do, very quickly. I just wanted to assert beyond any shadow of a doubt that I absolutely do believe we need to go further. We have specific limits of authorization that are in the reform act, and that beyond that, if the President wants to act, he must come here. And we tie it to obligation in expending of funds. That's really the point.

The point is that I think that there is enough authorization here for the Commander-in-Chief to act to defend us, defend our country. But beyond that, we should be involved. The American people should have a say, so if it's not an imminent threat to our country, if the President wants to move in the middle of the night, he's going to have to wait until he comes to the American people by way of their representatives first.

Chairman ROS-LEHTINEN. Thank you very much. Thank you, Mr. Rivera. Mr. Connolly of Virginia.

Mr. CONNOLLY. Thank you, Madam Chairman, and welcome to both of our colleagues.

Let me ask, our colleague, Mr. Paul, made the point in his opening statement that the War Powers Act in some ways dilutes the constitutional role of Congress in exercising its war powers. Doesn't he have a point?

Mr. GIBSON. Sir, to the degree that we have ambiguity on the 60–90 day colloquy that just occurred moments ago, I'd have to agree. And that's part of the reason why I'm trying to bring clarity to the situation.

With regard to the issue, must it be a declaration of war or an authorization of force, what I would say, sir, is that you look at the first generation of leaders, those that were there in Philadelphia in that hot summer, those that came to a final compromise on what the Constitution would contain, those leaders who led us, they, themselves in 1798 and in 1802, they went with an authorization for the use of force rather than a declaration of war.

And in one case, the President even asked for a declaration, and the Congress gave him an authorization. So, I would tell you that I'm comfortable with laying out these details, which are the declaration of war, the specific statutory authorization, or an emergency created by an attack or imminent threat of attack.

Mr. CONNOLLY. The evolution of this issue is a fascinating one, because the executive branch argues that there are virtually—well, they argue there are lots of inherent powers, constitutional inherent powers contained in the reference in the Constitution to the President's role as Commander-in-Chief.

Are there inherent powers, do you think, in the War Powers of Congress in the Constitution? I mean, if there are inherent powers in one, why aren't there inherent powers in the other?

Mr. GIBSON. You pose an interesting question. And I think that the key here is the notion of a countervailing balance here that this is really meant to be a dialogue between the legislative and executive branch. So, we really perform checks on each other by including the legislative branch. And I think it's important to note on this score that it's not just Adams, John Adams and President Jefferson, it's also President Eisenhower in the post World War II period. President Eisenhower was taking—he foresaw the possibility of having to react in then Formosa in the Suez, and he came here to the Congress to ask for authorization for that. So, there is a sensitivity by President Eisenhower that he could not by fiat take us to. Just as—so the Congress then had to be participating in this.

Mr. CONNOLLY. Let me, if I may, Congressman Gibson, because I'm actually pretty sympathetic to your point of view. But are there not, as Mr. Rooney indicated, going to be some circumstances, though, in which practically we've got to allow the President to deploy troops and come to us after-the-fact? I mean, I think Mr. Rooney cited, dead of the night, Congress is not in session, and there's a real threat.

Now, let me pose some hypotheticals to you. The President decides that we just need to intervene in a civil war in Central Africa. Under the terms of your proposed legislation, he would have to come to Congress before he could do that.

Mr. GIBSON. That is correct. Unless a country or there was an imminent threat of attack that was coming from a country there, then the President would be authorized to move in his capacity as the Commander-in-Chief.

Mr. CONNOLLY. All right. But let's say there is an imminent threat to a NATO ally that we're sworn to protect and defend, Country X decides to invade a NATO ally in Central Europe, is the

President under the terms of your legislation allowed to respond to that threat and come to Congress subsequently?

Mr. GIBSON. He would come here first before responding. And I would remind the——

Mr. CONNOLLY. Wait, wait.

Mr. GIBSON. Go ahead.

Mr. CONNOLLY. That is problematic, it seems to me. I mean, I understand the intent, and I'm not unsympathetic with the intent, but practically speaking, we have an ally that can't wait. Their borders have been breached, perhaps even superior force brought to bear. The President hasn't got a lot of time in which to come up to Congress and draft legislation, and have us debate and pass or not pass a resolution of authorization. It may be overtaken by events by the time we get around to it.

So, surely, it's reasonable in that set of circumstances, is it not, that we'd want to give more leeway to the President to exercise his executive authority?

Mr. GIBSON. I would—first of all, very thoughtful question. I would also bring to the fore here the fact that in the aftermath of the 11th of September, we had the first draft for the authorization of use of force on the 13th and the 14th. The first vote took place in the Senate on the 14th, and by the 18th of September it was the law of the land that the President was authorized to move.

Having conducted operations, as part of my military experience, I commanded the Global Response Force for the United States, for the Army's component of the Global Response Force, and we were on, essentially, an 18-hour—at the most heightened state of alert, we were on an 18-hour string prepared to go wheels up anywhere around the world.

And I will tell you that inside the planning cycles that it would take to conduct joint operations, there is time for the Congress to deliberate and to give its consent.

Mr. CONNOLLY. Well, Madam Chairman, I don't know that the clock is working, and I don't wish to impose. My clock still says I have 5 minutes. But if I may just say, I really—I want to thank our two colleagues for a very thoughtful contribution to this debate. And I find myself on common ground with our colleague, Mr. Paul, on the fact that, frankly, with whatever intentions, let's assume they were all good, I think the War Powers Act, by even acknowledging there's a statutory need to codify our powers in the Constitution, has had the unintended effect, perhaps, of enhancing the Executive's powers directly at the cost of Congress. And that, frankly, for an awful long time, we have abrogated our responsibilities constitutionally. And, from my point of view, the Executive has encroached and expanded beyond the giggle test its powers pursuant to the Constitution in this regard.

I think there are practical issues we're going to have to work out, but I think Mr. Gibson, Mr. Paul, and Mr. Rooney all have a point, and they're going to find me sympathetic as we move forward.

Thank you, Madam Chair.

Chairman ROS-LEHTINEN. Thank you so much. Ms. Ellmers of North Carolina is recognized for 5 minutes.

Ms. ELLMERS. Thank you, Madam Chairman. Thank you, again, for being here today. This is a wonderful exchange of information on an issue that I would characterize as being very gray.

I do want to ask you directly, though. I know we've talked about the Libyan situation, and we've talked about other situations where the War Powers Act has been put into effect. Do you believe that the President had the authority to do what he did in Libya? And I'll ask both of you that question. Do you believe that the Libyan situation, basically, adhered to the War—

Mr. GIBSON. No, I do not.

Ms. ELLMERS. Okay.

Mr. GIBSON. Not only on the front end, but even now. Let's look at the specific language from Public Law 93148, which is the War Powers Act. It says this, because this is a matter of fine point precision. We're talking 60 days here. This is what Section 5B says:

"Within 60 calendar days after report is submitted or is required to be submitted pursuant to Section 4A, whichever is earlier, the President shall terminate any use of United States armed forces with respect to which such report was submitted or required to be submitted unless the Congress has declared war, or has enacted a specific authorization for such use of United States armed forces, has extended by law such 60-day period, or is physically unable to meet as a result of an armed attack upon the United States."

Okay. So, it's not so much that the President came here on the 60th day. According to the letter of the law, if we don't act within 60 days, the President is to cease operations. And we're not in compliance.

Ms. ELLMERS. And we've already met that 60-day marker right now, and yet we have nothing going forward.

Mr. GIBSON. We have surpassed the 60 days, and Congress has taken no action to authorize the force. To be in compliance with the War Powers Act, we would have to cease operations.

Now, if the President requests, we can then provide stipulations on that withdrawal. We can actually give 30, 60, we could actually authorize how many days we think are prudent to make an orderly withdrawal.

Let me also just conclude by saying that this is the current law. I think we should move—I think we should delete these portions. I think we should either have authorization, the President either has authority to move, or he doesn't. And if he doesn't have authority to move, he comes here. If he thinks it's that important he comes here, and the American people give their blessing with stipulations, as the Congress may see fit, and then we go forward. But to do—but to not do so really leaves open this ambiguity.

This is what Mr. Connolly is referring to, is that the current War Powers Act as written really provides so much ambiguity as to expand the powers of the President. And that's why we need the reform act, is to bring balance back to the situation in line with the way the founders intended, for the legislative and the executive branch to interact on these solemn matters.

Ms. ELLMERS. Thank you, Mr. Gibson. Mr. Rooney?

Mr. ROONEY. I, too, am apprehensive about thinking that Libya was justifiable. But according to my resolution, I can be convinced that it was the greatest idea in the world. But the problem is that we've never had the debate.

Ms. ELLMERS. Right.

Mr. ROONEY. And the President and the administration needs to come here and say more than just we welcome your support. So, my predisposition is no, but I'm open to suggestion. But you're right, the 60 days has come and gone, and just to add on to—in the past, there's been Members of Congress who have sued and gone to Federal Court to say that you're in violation of the War Powers Resolution, and the Constitution, and it's made its way to the Supreme Court without it being heard directly on point, that we, or those members that did sue lacked standing. So, that adds to your idea of we're operating in a world of gray, and possibly legislation like Mr. Gibson's would clarify that. But all I'm saying is that if he really thought that Libya was important, and he would have come here within the War Powers framework of 60 days, he may very well have gotten the support of the Congress, but he didn't do that.

Ms. ELLMERS. Thank you very much. Yes, please, Mr. Gibson.

Mr. GIBSON. Thank you for the opportunity just to follow-up. I just want to agree with my colleague here that it's certainly an arguable point, the one that I made. I mean, that's my read of the current law. It has been debated in other places, and there have been positions, and there have been some court cases related to this. This is one of the reasons why I'm not asking today that we take sanctions against the President.

I think it's our responsibility to fix this. The ambiguity that exists has been exploited by Presidents on both sides of the political aisle. And in a time that we need to create jobs, balance the budget, and protect freedoms, now is not the time to be diverting into other matters, other matters in terms of any kind of proceedings on whether or not the President is not in concert with the law. That is not my purpose here today. What I want to do is fix this going forward so we don't end up back here at this very same spot.

Ms. ELLMERS. Thank you very much for your testimony, and thank you for your comments.

Chairman ROS-LEHTINEN. Thank you, Ms. Ellmers. I am pleased to yield to Mr. Burton of Indiana, the chairman of the Subcommittee on Europe and Eurasia.

Mr. BURTON. I think one thing that needs to be clarified is that an attack on NATO, a member state, has the—a NATO member state has the right to respond to an attack, and the treaty obligates the other members to support the attacked member. So, under the treaty we have right now, NATO, attack on one is, in effect, attack on all. And we would respond.

Mr. GIBSON. Well, sir, there's also a stipulation in there to make sure that it's in concert with the provisions of the constitution. And one would expect that just as President Roosevelt did on the 8th of December, that consistent with all foregoing understanding of the treaty and current law, that the President would come here for authorization.

Mr. BURTON. Yes, well, I have no problem with that. But the point is, the President would have the ability immediately, if necessary, to respond and then get to the Congress as quickly as possible.

Mr. GIBSON. The gentleman raises a good point. And what I would say to the chairwoman is that this should be something considered in markup in terms of what kind of clarity.

I happen to have a different view, but it appears that Mr. Burton and Mr. Connolly have different views. I think the important thing is that the American people are engaged. They're engaged right now that we're having this discussion, that their representatives are having this discussion.

Mr. BURTON. I'm a cosponsor of your bill, and that's one of the questions I have. Maybe you and I can talk and get some clarifying language that we could put into it in the markup.

The other thing that concerns me is, it says in Section 3 of the War Powers Act, it says, "The President in every possible instance shall consult with Congress before introducing U.S. armed forces into hostilities."

Now, in Libya it was not something that had to be done like that. It was something that France, England, and the United States discussed, NATO was not involved at that point. And the President had every—had completely enough time to come to the Congress and discuss this. And Section 3 of the War Powers Act is very clear, and he did not comply with that.

Now, the question arises what about when we're out of session? If it's important enough for us to commit troops or our resources to a conflict, all the President has to do is contact the Speaker of the House, the Majority Leader of the Senate and say I need to get these guys back here right away. And within 24 or 48 hours, we could be back here to discuss in total the whole issue.

So, I don't think that the President had the authority to go into Libya, and when I watched the remarks that he made today with the Prime Minister of England, it sounded like, to me, that he had made a decision that we were all in this together, we were committed to this war against Omar Ghadafi, and we would do what was necessary with American resources to make sure he was driven from power.

The President, in my opinion, according to the War Powers Act and the Constitution, does not have that authority. And yet, he is saying on international television right now, at least I think everybody that was watching would interpret, that we are, along with France, and England, and our NATO allies involved in a conflict to destroy the Omar Ghadafi regime.

So, I think that's just wrong, and I support your efforts. I really congratulate you, Representative Rooney and Representative Gibson, for working on this. It's extremely important, and anything I can do to help you in your endeavors to get this thing gone, I'll be glad to do. And with that, I'll yield back the balance of my time.

Chairman ROS-LEHTINEN. Thank you very much, Mr. Burton. And to wrap up our hearing, Dr. Paul is recognized from Texas. Thank you.

Mr. PAUL. Thank you, Madam Chairman.

First, I want to thank Mr. Connolly for his comments, and his questions, because I believe they were very pertinent, as well as Mr. Berman, because he had some concerns that I've had, as well, dealing with the obligations under treaty. And I do appreciate the fact that Mr. Gibson has come by my office to discuss these, and we've had our little debates on this, but I do want to follow-up with it, because I do have the concerns about this obligation.

Actually, the way I understand, NATO, United Nations is that it still requires, it doesn't say that we automatically go to war, we have to live within our Constitution. We have to come and get the proper authority under NATO and the United Nations. Matter of fact, I do believe that it was the League of Nations that failed because it did not require congressional approval, and that's why the American Government didn't support it.

But, nevertheless, I agree that there's a lot of ambiguities, and certainly today the legal opinion that I just read for the President, that we were obligated in order to maintain the credibility of the United Nations. So, they're using this as an authority.

Ambiguities, I believe, are very strong here. But I am not sure that adding to the bill, and to the War Powers Resolution that we have obligations under treaties, since our treaties, though, are so carelessly interpreted. So, I don't want to get too much into this, because you've already talked about this a good bit. But let us say that your bill was the law of the land, what—how would the President have been obligated to act differently when it came to Libya?

Mr. GIBSON. Given that the stipulations, declaration of war, authorization of force, or national emergency by attack upon the United States, its possessions, their armed forces, or imminent threat of attack was not present, the President would have had to have come here and receive the assent from the American people by way of their representatives.

Mr. PAUL. But could you not have said that without your phrase "obligations of treaty?" That doesn't give you that information, right?

Mr. GIBSON. It's possible. The reason why I have put it in the bill is because I don't think that—I don't think this has been discussed enough in our discourse, that we have—the American people, we have made—we have given our word in seven different pacts between 1947 and 1960, even though there shall be a vote consistent with our constitutional procedures.

Let's recognize how weighty that vote would be. We would be, essentially, voting whether or not we're going to stick by what we said we were going to do. So, I mean, I think you would agree that that would a difficult vote to vote no.

Mr. PAUL. Well, I have trouble with it, because I think there's going to be more ambiguities. You know, I stated earlier that I don't even like the War Powers Resolution, because I think it undermines the Constitution and congressional authority, and hasn't done well for us. But the one part of it that sort of—it was intended to protect the Congress. And the reason the Presidents all considered the War Powers Resolution unconstitutional, because they want more power. And that is the requirement to report back, so I actually am concerned about removing the fact that they are required to come back in.

So, if we raise the ambiguity level by saying we can go to war under an interpretation of a treaty, then all of a sudden we don't have this extra protection, probably makes my case for why do we have this War Powers Resolution, but I'm not—I don't think that strengthens the congressional position by removing that requirement.

Mr. GIBSON. Well, let me clarify. Section 3 of the War Powers Act is retained. It's Sections 5, 6, and 7 that are deleted. In Section 3, the President reports within 48 hours given that he is in compliance. That is not being deleted. It's the reporting requirements subsequent to that, the 30, the 60, the 90 day reports that are considered really not relevant any more. It's Section 3 that's affirmed.

So, let me just offer you one thing, sir, is that my sense is that you're more concerned with the treaties than you are, necessarily, about the bill. And that may be a fair point, and something that a new generation of leaders can discuss, but I just want to raise the level of consciousness, that the American people in their former leaders gave their consent to certain things that certainly would come before a vote. But, again, the difficulty in that vote, given the fact that the American people gave their word.

Now, one last thing, sir, I wanted to say, is that just as it's important that we dialogue here, Democrats and Republicans, the American people coming together and having this conversation, this won't work unless we get the President to sign it. That's part of the reason why we're here today, is that we need to work with the President to make sure that he agrees to this. And you may say well, why would the President agree to this? I mean, this would limit his powers.

The point is that given our current status today, it benefits no one. Here we are having this hearing because the administration, it's unclear whether or not they're on constitutional grounds.

I would think that the President, whomever it is, would be interested in bringing clarity to the situation. And that's why I think it's important that we all work together, and we work with the administration to come to an agreement about where we should be on War Powers in relation to the founders' intent.

Mr. PAUL. Madam Chairman, my time has expired, but may I have one short question?

Chairman ROS-LEHTINEN. Without objection.

Mr. PAUL. Thank you. I would like to ask Mr. Rooney this question. I know you've deferred and didn't want to particularly discuss Mr. Gibson's bill. But since you've been a professor of Constitutional Law, I think it would be nice to have your opinion.

That phrase that he wants to add into about obligations under treaties, would you care to make any comment about that?

Mr. ROONEY. Yes. Certainly, I think that there, obviously, is mention of that in the Constitution. And with regard to what you were asking before, one of the concerns that I have, certainly, with the way that the President—this President has moved forward, and some of the comments that have come out of the administration that deal with kind of like the new way that we're going to go to war in the future under the Obama doctrine, is if it's small, humanitarian, we have NATO, there's no need for Congress to get in-

volved. And somehow, to go to your question, that trumps what our role is, that concerns me greatly.

But, again, as I said before, those words have been used by prior administrations. This humanitarian idea was used by Clinton, so we're not in uncharted territory. And, possibly, new legislation that trumps the War Powers Resolution might bring clarity, but I think that what my resolution simply says is just let's act within accordance of the law.

If the President took the time to follow the law when it came to notifying us within 48 hours, and obviously has some interest, as Representative Gibson said, in following the law, but it's where we go from there that we always sort of have the wheels come off. So, I would just say that if we don't continue to assert ourselves, of course, we have the power of the purse in the end. But I think that we shouldn't stop this fight just because we do or don't like the War Powers Resolution, and what it says therein.

Chairman ROS-LEHTINEN. Thank you.

Mr. PAUL. I thank you, and I yield back.

Chairman ROS-LEHTINEN. Thank you, Dr. Paul. And Mr. Berman is chomping at the bit, just to make a little clerical clarification to Mr. Rooney's bill.

MR. BERMAN. Yes. I want to make it—well, make it clear to Representative Rooney, my comment about hypocrisy was about us as an institution, and those of us who haven't introduced a sense of Congress resolution, little less a change in the law, or an amendment to cut off funding may be in the world of the hypocrisy meter of higher hypocrisy than those who have.

But, secondly, just to come back to the point Mr. Paul was making. I'm still trying to understand the treaty issue, Mr. Gibson, in your bill. I mean, it's good to have a conversation, but is that the only purpose of that provision? If you still have to get the authorization, what are you saying about countries with whom we have treaties? And then just to take Mr. Connolly's question on Africa, what if it's a civil war in a country with whom we have a treaty?

Mr. GIBSON. I've reviewed in the process of this research, I've been through all seven defense agreements that we have, and there isn't one that meets that hypothetical. So, I guess that's the way I'd answer that response to you.

What I will say is this. Let me answer your question first, and that is that I put it in there to raise the level of consciousness really to our body that we have given, we, the people, have given our word to this. Yes, the stipulation says we shall take a vote, but I guess what I'm trying to communicate—

Mr. BERMAN. You're saying it's sort of, guys, weigh the fact that they are a treaty partner as you cast your vote.

Mr. GIBSON. Right. And I—what I'd also tell you, sir, is that if we don't think that that's still our position, then we have a responsibility to move to repeal the treaty. So, I think it's incumbent upon every generation of leaders to take a look at the responsibilities that we have attendant to our word going forward.

Chairman ROS-LEHTINEN. Thank you, Mr. Gibson. I'm generous, but not extravagant. And we will continue this discussion tomorrow on the War Powers Act, and we'll have another set of experts.

And with that, the committee is adjourned. Thank you, ladies and gentlemen.

[Whereupon, at 12:10 p.m., the committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

**FULL COMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS**

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

Ileana Ros-Lehtinen (R-FL), Chairman

May 18, 2011

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at <http://www.hcfa.house.gov>**:

DATE: Wednesday, May 25, 2011

TIME: 10:30 a.m.

SUBJECT: War Powers, United States Operations in Libya, and Related Legislation

WITNESSES: The Honorable Justin Amash
Member of Congress

The Honorable Christopher Gibson
Member of Congress

The Honorable Thomas Rooney
Member of Congress

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS
MINUTES OF FULL COMMITTEE HEARING

Day Wednesday Date May 25, 2011 Room 2172 Rayburn

Starting Time 10:35 am Ending Time 12:09 pm

Recesses ☐ (to) (to) (to) (to) (to) (to)

Presiding Member(s)

Chairman Ros-Lehtinen

Check all of the following that apply:

Open Session ☒

Executive (closed) Session ☐

Televised ☒

Electronically Recorded (taped) ☒

Stenographic Record ☒

TITLE OF HEARING:

War Powers, United States Operations in Libya, and Related Legislation

COMMITTEE MEMBERS PRESENT:

Attendance Attached

NON-COMMITTEE MEMBERS PRESENT:

HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐

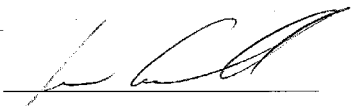
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 12:09 pm



Jean Carroll, Director of Committee Operations

Hearing/Briefing Title: War Powers, United States Operations in Libya, and Related Legislation

Date: May 25, 2011

| Present | Member |
|---------|-------------------------|
| X | Ileana Ros-Lehtinen, FL |
| X | Christopher Smith, NJ |
| x | Dan Burton, IN |
| X | Elton Gallegly, CA |
| X | Dana Rohrabacher, CA |
| X | Donald Manzullo, IL |
| X | Edward R. Royce, CA |
| X | Steve Chabot, OH |
| X | Ron Paul, TX |
| | Mike Pence, IN |
| | Joe Wilson, SC |
| | Connie Mack, FL |
| | Jeff Fortenberry, NE |
| | Michael McCaul, TX |
| X | Ted Poe, TX |
| X | Gus M. Bilirakis, FL |
| X | Jean Schmidt, OH |
| | Bill Johnson, OH |
| X | David Rivera, FL |
| | Mike Kelly, PA |
| | Tim Griffin, AK |
| X | Tom Marino, PA |
| | Jeff Duncan, SC |
| X | Ann Marie Buerkle, NY |
| X | Renee Ellmers, NC |

| Present | Member |
|---------|---------------------------|
| X | Howard L. Berman, CA |
| | Gary L. Ackerman, NY |
| | Eni F.H. Faleomavaega, AS |
| | Donald M. Payne, NJ |
| X | Brad Sherman, CA |
| | Eliot Engel, NY |
| | Gregory Meeks, NY |
| | Russ Carnahan, MO |
| | Albio Sires, NJ |
| X | Gerry Connolly, VA |
| | Ted Deutch, FL |
| | Dennis Cardoza, CA |
| X | Ben Chandler, KY |
| | Brian Higgins, NY |
| | Allyson Schwartz, PA |
| | Chris Murphy, CT |
| | Frederica Wilson, FL |
| X | Karen Bass, CA |
| | William Keating, MA |
| X | David Cicilline, RI |