

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 1 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.