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.

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.

And the basis for the Israel exemption, where we

don’t have that treaty?

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?

That’s what I’m trying to do, is have the conversation.

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——

Absent an authorization.

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.

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.

Yes. Thank you.

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?

You’re saying it’s sort of, guys, weigh the fact that

they are a treaty partner as you cast your vote.