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

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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 cosponsors,

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

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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:]

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.

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——

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.

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.

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.

What this bill——

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.

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 counterproductive.

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.

That’s a discussion we could have, absolutely, we,

the Congress.

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.

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.

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.

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.

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.

He would come here first before responding. And I

would remind the——

Go ahead.

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.

No, I do not.

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.

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.

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.

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.

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.

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.

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.

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.

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——

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.