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:]

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 it 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.

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

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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.

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.

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.

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 unchartered 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.