

Calendar No. ???

112TH CONGRESS }
1st Session }

SENATE

{ REPORT
112-???

S.J. RES. 20, A JOINT RESOLUTION AUTHORIZING THE LIMITED USE OF THE UNITED STATES ARMED FORCES IN SUPPORT OF THE NATO MISSION IN LIBYA

JUNE 29, 2011.—Ordered to be printed

Mr. KERRY, from the Committee on Foreign Relations,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S.J. Res. 20]

The Committee on Foreign Relations, having had under consideration S.J. Res. 20, a joint resolution authorizing the limited use of the United States Armed Forces in support of the NATO mission in Libya, reports favorably thereon, with amendments, and recommends that the joint resolution, as amended, do pass.

CONTENTS

	Page
I. Purpose	1
II. Committee Action	2
III. Discussion	3
IV. Minority Views of Senator Lugar	4
V. Cost Estimate	5
VI. Evaluation of Regulatory Impact	5
VII. Changes in Existing Law	5

I. PURPOSE

The purpose of S.J. Res. 20 is to authorize the limited use of the United States Armed Forces in support of the NATO mission in Libya.

II. COMMITTEE ACTION

S.J. Res. 20 was introduced by Senators Kerry, McCain, Levin, Kyl, Durbin, Feinstein, Graham, Lieberman, Blunt, Cardin, and Kirk on June 21, 2011. On June 28, 2011, the committee considered S.J. Res. 20 and ordered it reported, with amendments, by a roll call vote of 14 to 5, with Senators Kerry, Boxer, Menendez, Cardin, Casey, Webb, Shaheen, Coons, Durbin, Udall, Rubio,

Inhofe, Isakson and Barrasso voting in favor, and Senators Lugar, Corker, Risch, DeMint and Lee opposed.

The committee took the following action with regard to amendments:

An amendment by Senator Lugar to express the sense of the Congress on reconstruction and stabilization costs was agreed to by voice vote.

An amendment by Senator Lugar to declare that the authority for the limited use of the United States Armed Forces is intended to constitute specific statutory authorization under the War Powers Resolution was agreed to by voice vote (Senator Inhofe asked to be recorded as voting against the amendment).

A second degree amendment by Senator Webb (to the amendment from Senator Lugar listed below) to provide the President limited authority to use United States ground forces and private security contractors subject to specific advance authorization from Congress was agreed to by voice vote.

An amendment by Senator Lugar to restrict the use of funds to deploy, establish or maintain the presence of units and members of the United States Armed Forces on the ground in Libya (as amended by the second degree amendment from Senator Webb listed above) was agreed to by voice vote.

An amendment by Senator Lugar to limit the use of Department of Defense funds for the United States Armed Forces in support of Operation Unified Protector failed by a roll call vote of 5 to 14, with Senators Lugar, Corker, Risch, DeMint, and Isakson voting in favor, and Senators Kerry, Boxer, Menendez, Cardin, Casey, Webb, Shaheen, Coons, Durbin, Udall, Rubio, Inhofe, Barrasso, and Lee opposed.

A second degree amendment by Senator Corker (to the amendment by Senator Lugar listed below) to require the report on the cost and impacts of military operations to be submitted every 30 days was agreed to by voice vote.

An amendment by Senator Lugar (as amended by the second degree amendment by Senator Corker listed above) to require a report on the costs and impact of United States military operations in Libya was agreed to by voice vote.

An amendment by Senator Menendez to ensure the continued investigation of terrorist attacks against the United States attributable to the government of Muammar Qaddafi was agreed to by voice vote.

An amendment by Senator Corker to clarify the goals of United States military and political goals in Libya was agreed to by voice vote.

An amendment by Senator Corker to provide for briefings and reports to Congress on United States efforts in Libya every 30 days was agreed to by voice vote.

An amendment by Senator Corker to provide that the authority to continue the limited use of the United States Armed Forces in Libya expires was agreed to by a voice vote with a modification that was agreed to without objection.

An amendment by Senator Rubio to express the sense of Congress that the President should recognize the Transitional National Council was modified and divided without objection. The portion of the amendment regarding blocked assets was agreed to by voice

vote. The portion of the amendment regarding recognition of the Transitional National Council was withdrawn.

III. DISCUSSION

Section 2(a) of S.J. Res. 20 provides that the President is authorized to continue the limited use of U.S. Armed Forces in Libya, in support of United States national security policy interests, as part of the NATO mission to enforce United Nations Security Council Resolution 1973 (2011), as requested by the Transnational Council, the Gulf Cooperation Council, and the Arab League. Pursuant to section 2(b), this limited authority expires on the date that NATO operations end or one year after the date of enactment of the resolution, whichever comes first.

Section 2 is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (WPR) (50 U.S.C. 1544(b)). Section 2(c)(2)(B) states that United States military operations in Libya since April 4, 2011 constitute hostilities within the meaning of the WPR, and may be carried out only under the conditions specified in section 5(b) of the WPR.

Section 2(d) indicates that appropriated funds may not be obligated or expended for (1) deploying U.S. Armed Forces on the ground in Libya for the purposes of engaging in ground combat operations, or participating in stabilization or international peacekeeping operations following the removal of Muammar Qaddafi from government and during the transition to a new government in Libya; (2) awarding a contract to a private security contractor to conduct any activity on the ground in Libya, or (3) otherwise establishing or maintaining any presence of units or members of the United States Armed Forces or private security contractor on the ground in Libya. Section 2(d) provides two exceptions to this prohibition. The first is for the immediate personal defense of United States Government officials (including diplomatic representatives) or for rescuing members of NATO forces from imminent danger. The second applies if, prior to such action, the President determines and certifies to Congress that the action is necessary and legislation is enacted specifically authorizing such action.

Section 3 indicates that, consistent with the policy and statements of the President, Congress does not support deploying, establishing, or maintaining U.S. Armed Forces on the ground in Libya unless the purpose of the presence is limited to the immediate personal defense of United States Government officials (including diplomatic representatives) or to rescuing members of NATO forces from imminent danger.

Section 4 requires the President to consult frequently with Congress regarding United States efforts in Libya and requires briefings and reports on U.S. efforts in Libya to be delivered to Congress not later than 30 days after the date of enactment of the resolution and every 30 days thereafter.

Section 5 requires that the President submit a report on the costs and impact of military operations in Libya, including on the impact of such operations on U.S. military operations in Afghanistan, within 15 days of enactment of the resolution and every 30 days thereafter.

Section 6 provides that the President shall continue any investigative activities with regard to the bombing of Pan Am flight 103 and any other terrorist attacks against United States citizens and attributable to the Qaddafi regime. It further requires a report on such investigative activities within 180 days of enactment of the resolution and annually thereafter. Finally, section 6 provides that the President shall consider the cooperation of the Transitional National Council and any successor government of Libya with respect to such investigative activities when making decisions about the distribution of confiscated property and the provision of United States assistance.

IV. MINORITY VIEWS OF SENATOR LUGAR

I oppose the joint resolution reported by the committee.

The United States is still engaged in wars in Afghanistan and Iraq and our national debt exceeds \$14 trillion. In light of these circumstances, and the lack of vital U.S. interests in Libya, I do not believe that we should be intervening in a civil war there.

As reported by the committee, S.J. Res. 20 would provide expansive authorities permitting the continuation and significant escalation of U.S. military involvement in Libya's civil war.

The joint resolution would authorize the President to re-escalate U.S. military involvement in Libya to, and potentially beyond, the lead role it played at the beginning of the operation, when the United States carried out intensive air strikes on a daily basis. The joint resolution would only limit the President to actions "in support of United States national security policy interests" and "to enforce United Nations Security Council Resolution 1973."

Though President Obama indicated when he initiated this intervention that it would be limited in duration, our operations there have now lasted more than 100 days, and this joint resolution would authorize them to continue for as long as an additional year. The costs of these operations will exceed \$1 billion by September, and could rise significantly beyond this over the period provided for in the joint resolution.

While I believe the resolution adopted by the committee is unwise, the committee adopted four amendments I offered to the resolution that address important issues related to our involvement in Libya.

Of particular importance, the committee adopted an amendment to establish as a matter of law that current U.S. military operations in Libya constitute hostilities for the purposes of the War Powers Resolution. This will prevent the administration from continuing to rely on its legally dubious claim that Congressional authorization is not needed for these operations because they do not constitute "hostilities." It will also prevent the administration's interpretation from becoming an accepted precedent that future administrations may rely on to conduct significant and prolonged military engagements without Congressional authorization.

The committee also adopted amendments I offered that will establish a legally binding prohibition on the use of appropriated funds to deploy U.S. ground forces to Libya and will ensure regular reporting to Congress on the costs of the Libya operations and their impact on other U.S. and NATO military operations, including against al Qaeda and the Taliban. In addition, the committee

adopted an amendment expressing the Sense of the Congress that post-war reconstruction costs in Libya should be borne primarily by the Libyan people and Arab League nations which requested the military intervention.

These measures are important if U.S. military operations in Libya are going to continue, and potentially expand, as provided for in the joint resolution. These changes are not sufficient, however, to remedy the fundamentally flawed course of action which the joint resolution would authorize.

V. COST ESTIMATE

The resolution authorizes the continuation of the limited operations of the United States Armed Forces in Libya. In the report, "United States Activities in Libya," submitted to Congress on June 15, 2011, the administration estimated the total cost of those operations from their commencement on March 19, 2011 through September 30, 2011, at \$1.104 billion.

Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate requires that committee reports on bills or joint resolutions contain a cost estimate for such legislation. To date, the committee has not received the Congressional Budget Office cost estimate.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this resolution.

VII. CHANGES IN EXISTING LAW

Pursuant to Rule XXVI, paragraph 12 of the Standing Rules of the Senate, the committee has determined that there are no changes in existing law made by the resolution, as reported.