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A JOINT RESOLUTION TO AUTHORIZE THE LIMITED USE
OF THE UNITED STATES ARMED FORCES AGAINST THE
ISLAMIC STATE OF IRAQ AND THE LEVANT

DECEMBER 13, 2014.—Ordered to be printed

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

REPORT

together with

MINORITY VIEWS

[To accompany S.J. Res. 47]

The Committee on Foreign Relations, having considered an original joint resolution (S.J. Res 47) to authorize the limited use of the United States Armed Forces against the Islamic State of Iraq and the Levant having considered the same, reports favorably thereon, without amendment, and recommends that the joint resolution do pass.

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I. PURPOSE

The purpose of the committee’s joint resolution is to authorize the limited use of the United States Armed Forces against the Islamic State of Iraq and the Levant (ISIL) and associated persons or forces for a period of three years, unless reauthorized. The joint resolution also repeals the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107–243) and sunsets the Authorization for Use of Military Force (Public Law 107–40) after 3 years, unless reauthorized.

II. BACKGROUND

ISIL poses an imminent threat to Iraq and Syria, and is already challenging U.S. partners bordering these two countries such as Israel, Jordan, and Lebanon. ISIL demonstrates intent and capability to seize and hold territory from governments in the Middle East, and if left unchecked will threaten broader regional stability, the security of European partners, and ultimately U.S. security interests. Thousands of foreign fighters are traveling to Iraq and Syria to join ISIL's ranks, whether motivated by financial incentives or misguided ideological convictions. ISIL is well-resourced and well-connected through a sophisticated media program and continues to commit systematic abuses of human rights, targeted killings, and mass atrocities. ISIL publicizes its genocidal intentions, enslaves women and children, and has executed U.S. citizens and other hostages.

Article I, Section 8, of the Constitution confers upon Congress the power to declare war, as well as the power to raise, support and regulate militias, armies and a navy. While the United States has engaged in numerous armed conflicts since 1789, Congress has only enacted 11 separate formal declarations of war against foreign powers in five wars: the War of 1812, the Mexican-American War, the Spanish-American War, World War I and World War II. The more common practice has been for Congress to provide authorizations for the use of military force, even when the President has requested a declaration of war, as occurred in 1815 in Algeria. Even on the occasions that Congress has declared war, Congress has also taken the additional step of authorizing the President to use force to prosecute the war. It has thus been clearly demonstrated that Congress does not need to provide a declaration of war in order to provide full authorization for the President and the armed forces to wage war.

In the years since World War II, Congress has preferred to rely upon authorizations for the use of military force in order to empower the President to employ the armed forces in certain situations. In the 1964 Gulf of Tonkin Resolution, Congress approved the President's determination to take "all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression" in Southeast Asia. The resolution had no specific sunset date and was instead set to expire upon the President's determination or Congressional repeal—the latter of which occurred in 1971. Two years later, following controversy over the entrance of the United States into the Vietnam War and the duration of U.S. involvement, Congress enacted the War Powers Resolution as a means to reassert its constitutional authority, and to provide appropriate procedures for the Legislative and Executive branches to follow in situations where the United States could become committed to an armed conflict. The War Powers Resolution clarified that the constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

The resolution directs the President to notify Congress 48 hours before U.S. armed forces are introduced into hostilities and regularly report to Congress thereafter. Furthermore, it prevents U.S. armed forces from remaining engaged in hostilities for more than 60 days—with an additional 30 day window for withdrawal of U.S. armed forces—absent passage of a declaration of war or authorization for the use of military force from Congress.

Following the tragic events of September 11, 2001, the President consulted with Congress in drafting a joint resolution for military force against those responsible for attacks on the United States. The Authorization for Use of Military Force (Public Law 107–40) (2001 Al-Qaeda AUMF), which passed the Congress with overwhelming support, authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.” The resolution was unique in authorizing military force for the first time against non-state actors such as organizations and persons. The next year, in response to what the President deemed a significant threat, Congress enacted the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107–243) (2002 Iraq AUMF). The resolution authorized the President to use necessary and appropriate force to defend the national security of the United States against the threat posed by Iraq and enforce United Nations Security Council resolutions regarding Iraq. On May 21, 2014, administration witnesses testified before the committee that the administration supports the repeal of the 2002 Iraq AUMF due to the cessation of U.S. combat operations in Iraq.

On November 5, 2014, the President indicated at a press conference his intent to work with Congress to pass a new authorization for the use of military force for the contributions of U.S. Armed Forces to the international anti-ISIL coalition. On December 9, 2014, Secretary of State John Kerry testified before the committee regarding the threat posed by ISIL and the Chairman’s draft joint resolution to authorize the use of the United States Armed Forces against ISIL. In his testimony, in addition to outlining the threat posed by ISIL and commenting on the Chairman’s draft joint resolution, Secretary Kerry cited the 2001 Al-Qaeda AUMF and the 2002 Iraq AUMF as providing the President legal authority to pursue U.S. military operations against ISIL.

III. COMMITTEE ACTION

On December 11, 2014, the committee considered the Chairman’s joint resolution and reported it favorably by a roll call vote of 10–8. Senators Menendez, Boxer, Cardin, Shaheen, Coons, Durbin, Udall, Murphy, Kaine, and Markey voted in favor. Senators Corker, Risch, Rubio, Johnson, Flake, McCain, Barrasso, and Paul voted against.

The committee took the following action with regard to amendments:

The Chairman offered a Manager’s Amendment, which incorporated language from a number of amendments to the Chairman’s text that Members had filed, including language addressing horrific abuses by ISIL against women and girls; language making clear

the importance of finding a way to pay for the activities being authorized; and language to sunset the 2001 Al-Qaeda AUMF after a period of 3 years from enactment, unless reauthorized. The Manager's Amendment was adopted by a vote of 11–7. Senators Menendez, Boxer, Cardin, Shaheen, Coons, Durbin, Udall, Murphy, Kaine, Markey, and Paul voted in favor. Senators Corker, Risch, Rubio, Johnson, Flake, McCain, and Barrasso voted against. In addition, Senator Udall offered an amendment to change the duration of the authorization in the resolution from 3 years to 1 year. The amendment failed by a vote of 6–12, with Senators Boxer, Durbin, Udall, Murphy, Markey, and Paul voting in favor; and Senators Menendez, Cardin, Shaheen, Coons, Kaine, Corker, Risch, Rubio, Johnson, Flake, McCain, and Barrasso voting against. In addition, Senator Paul offered an amendment to limit the authorization geographically to Iraq and Syria only. The amendment failed by a vote of 5–13, with Senators Udall, Murphy, Kaine, Markey, and Paul voting in favor; and Senators Menendez, Boxer, Cardin, Shaheen, Coons, Durbin, Corker, Risch, Rubio, Johnson, Flake, McCain, and Barrasso voting against.

IV. DISCUSSION

At the business meeting to consider the joint resolution, members of the committee expressed a common view that ISIL poses a threat to United States interests and to the United States' allies in the region. There was a robust discussion of the respective responsibilities of the President and the Congress under the United States Constitution regarding the use of force by the United States Armed Forces.

Members expressed a range of views on whether and how a Congressional authorization for use of military force should be limited in duration and scope. Several Members expressed the view that the President's claim of reliance upon the legal authorities of the 2001 Al-Qaeda AUMF against a group that had been disavowed by the leadership of that terrorist group to be an insufficient legal basis to conduct the current military operations in Iraq and especially Syria. For a multi-year effort to degrade and destroy ISIL, Members generally felt that a new authorization for the use of military force was required.

The committee views the link between the purposes and intents of the 2001 Al-Qaeda AUMF and the 2002 Iraq AUMF, on the one hand, and the current need for military actions against ISIL, on the other hand, as highly attenuated. In addition, while the 2001 Al-Qaeda AUMF has served the United States well by providing the legal authority to pursue and dismantle Al Qaeda and its associated forces, it is the view of the committee that the 2001 AUMF should be re-examined within 3 years and, depending on the results of that re-examination, be either refined and re-authorized or else allowed to lapse.

Members also expressed a range of views on the issue of the limitation on the President's authority to introduce U.S. ground troops for the purpose of direct combat with ISIL forces. The President has expressed on a number of occasions that he will not deploy ground troops to Iraq for that purpose. A majority of the committee believes that this limitation should be enshrined in the authorization for use of military force itself, with appropriate exceptions as

outlined in the joint resolution. The committee is of the view that, based on current circumstances and the President's own statements, the United States should not deploy U.S. soldiers to fight on the ground in Iraq or Syria for a large-scale ground combat operation. The committee is of the view that if the President decides that a large-scale United States ground combat force is needed to defeat ISIL, then the President should come back to the Congress for that authorization so that Congress can consider the issue and come to a decision about whether and how use of force authorities need to be modified to accomplish the mission. The committee is of the view that under the current circumstances, sending a large-scale United States ground combat force into the region could very well "Americanize" the war against ISIL, transforming it from a conflict that Iraqis and others in the region should fight on the ground, to what ISIL would characterize as a fight against Western occupiers in the region, further destabilizing the region.

A section-by-section discussion of the committee's joint resolution follows:

The preambular clauses of the joint resolution outline the threat posed by ISIL, actions already taken by the United States Government to counter the threat including United States and Coalition airstrikes, and a statement by the President regarding his commitment to working with Congress to pass an authorization for the use of military force for the anti-ISIL military campaign.

Section 1

Section 1 names the committee's joint resolution as the "Authorization for the Use of Military Force against the Islamic State of Iraq and the Levant."

Section 2

Section 2(a) authorizes the President to use the Armed Forces of the United States as the President determines to be necessary and appropriate against the Islamic State of Iraq and the Levant, or associated persons or forces. Section 2(b)(1) is intended to constitute specific statutory authorization within the meaning of sections 8(a)(1) and 5(b) of the War Powers Resolution (WPR) (50 U.S.C. 1544(b)). Section 2(b)(2) affirms that nothing in the committee's joint resolution supersedes any of the requirements of the War Powers Resolution. Section 2(c) limits the authorization of military force in Section 2(a) by proscribing the use of the United States Armed Forces for the purpose of ground combat operations, except as necessary (1) for the protection or rescue of members of the United States Armed Forces or United States citizens from imminent danger posed by ISIL; or (2) to conduct missions not intended to result in ground combat operations by United States forces, such as intelligence collection and sharing; enabling kinetic strikes; operational planning; or other forms of advice and assistance to forces fighting ISIL in Iraq or Syria.

Section 3

Section 3 specifies that the duration of the authorization for the use of military force is 3 years from the date that this joint resolution is enacted into law, unless reauthorized.

Section 4

Section 4(a) requires that the President report to the Congress on specific actions taken pursuant to the authorization. These reports must be made at least once every 60 days so long as the authorization remains in effect.

Section 4(b) requires the President, no later than 30 days after enactment of the joint resolution, to submit to Congress an unclassified report (which may include a classified annex) on the comprehensive strategy of the United States in Iraq and Syria, including all activities authorized by the joint resolution.

Section 5

Section 5 provides a definition of the phrase “associated persons or forces” for purposes of action authorized to be taken under the joint resolution, meaning individuals and organizations fighting for or on behalf of the Islamic State of Iraq and the Levant or a closely-related successor entity.

Section 6

Section 6 provides that the provisions of the joint resolution pertaining to the authorization of use of force against the Islamic State of Iraq and the Levant shall supersede any preceding authorization for the use of military force.

Section 7

Section 7 repeals the 2002 Iraq AUMF.

Section 8

Section 8 provides that the 2001 Al-Qaeda AUMF shall terminate on the date that is 3 years after the date of the enactment of the joint resolution, unless reauthorized.

V. COST ESTIMATE

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. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

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 legislation.

VII. CHANGES IN EXISTING LAW

In compliance with rule XXVI, paragraph 12 of the Standing Rules of the Senate, the committee has determined that there is no change to existing law made by the bill, as reported.

VIII. MINORITY VIEWS

MINORITY VIEWS OF SENATORS CORKER, RISCH, RUBIO, JOHNSON, AND McCAIN

The Committee's reporting of this proposed authorization to the Senate—on a straight party-line vote, in the last days of the 113th Congress, when it is clear that there is no possibility of it being enacted into law—is disappointing. Beginning a process—particularly one as important as authorizing the use of military force—at a time and under circumstances in which it has no chance of being successfully completed, has the potential of sending the wrong message to our allies and enemies around the world.

The Committee is acting absent a specific request from the President. While we would not rule out Congress acting without a specific presidential request, it is the historic norm that the Commander in Chief would make such an ask. The Committee is also acting without a full account of the Commander in Chief's views on the nature and scope of an authorization. It is doing so without any testimony on its proposed authorization—in open or classified session—from the Department of Defense, the key agency the President has tasked with carrying out this conflict, and without taking into account the testimony the Committee did hear from the Secretary of State on the proposed authorization.

While the Committee finds itself in this position in part because of a lack of presidential leadership, it is very evident that the administration does not want to discuss this issue in public because it cannot today lay out a plausible strategy to achieve its stated goals. As a result, the President has not formally requested an authorization for the use of force nor has he submitted a proposed draft text. The administration has further refused to make witnesses available to the Committee—despite bipartisan requests to do so—and has made no effort to build bipartisan support for any authorization or to provide specific details on what text the President would actively seek to get passed through Congress. In essence, the President has failed to provide Congress with a serious, convincing, and clear direction that could credibly lead to success on the stated goal of degrading and ultimately defeating ISIS.

There are serious, bipartisan concerns—and concerns from key regional partners whose participation is essential—with respect to the President's current approach to this conflict. In particular, members of Congress and our partners around the world are concerned about the President's failure to deal with the many complexities and competing forces in Syria where ISIS makes its home. We do acknowledge the difficulties presented by the situation in Syria, and hope that in the coming days the administration will be in a better position to give more clarity to their approach. Key policy decisions have not yet been made. Most notably, the administration

does not have a realistic plan to build and protect a partner force in Syria in a reasonable timeframe, nor has it offered any other alternative on the ground, and there is great uncertainty regarding the President's policy toward Syrian President Bashar al-Asad. The lack of a clear direction in Syria could lead to an incremental decision-making process and an unsuccessful outcome, as such an approach has in the past.

Further, it is our view that, based on the public discussion, some members of the majority, while stating that their purpose is to give the President the necessary legal authorization for ongoing efforts against ISIS, have a greater desire in this process to express their view on the record that U.S. ground troops be prohibited in the conflict. A better way of expressing that view, at this stage—prior to substantive testimony from key agencies in the Executive Branch—would have been to send a joint letter to the President.

Secretary Kerry's testimony before the Committee on December 9, 2014 also revealed significant differences between the administration's view of an appropriate authorization and the proposed legislation being reported to the floor today by the Committee's majority. For example, Secretary Kerry explicitly rejected the restrictions on the use of ground forces proposed by the majority, noting that they would "preemptively bind the hands of the Commander in Chief—or our commanders in the field—in responding to scenarios and contingencies that are impossible to foresee." Secretary Kerry further testified that any time limit on an authorization—like the one proposed by the majority—needs to provide flexibility for extensions and noted that the majority's definition of the phrase "associated forces" did not provide the President with the authority needed to effectively prosecute the current conflict.

However, just two days after this testimony, the majority of this Committee voted to approve legislation that contained no modifications whatsoever on any of these issues. And one day after the Committee's action, the White House Press Secretary stated that the majority's proposed authorization contains "concerning language that would limit the flexibility of the Commander in Chief to deploy a military strategy in the situation" and that the majority's proposed restrictions on presidential authority to fight the conflict with ISIS "did not fall within the category of reasonable limitations that [the White House] could support."

It is this very legislation—flatly inconsistent with the Secretary of State's description of the administration's minimum needs and openly criticized by the White House—that is being reported to the floor by the majority today.

Finally, it is important to also note a few additional issues with respect to the majority's proposed authorization and the report accompanying the legislative text. The proposed authorization contains a provision that would terminate in three years the 2001 Authorization for the Use of Military Force passed by Congress in the aftermath of the 9/11 attacks. While there is much debate about the need for Congress to take a new look at that authority, simply terminating the authority on a date certain without any notion, debate, or discussion of what might follow and without appropriate procedures for a transition of authorities—as the majority proposes—is questionable. The majority's report accompanying the leg-

islative text also contains certain factual and analytical inaccuracies regarding the historical record on authorizations for the use of force and refers to the views of the committee in contexts where it should be clear that there is much ongoing debate. As such, significant portions of the majority's report only reflect the views of some members of the Committee.

In the end, it is unfortunate that this Committee's work in the 113th Congress—which has been largely bipartisan to this point—ends on this note. It is our sincere hope that the next Congress will bring an opportunity to build a common understanding of the challenges facing our nation and a strong, bipartisan path forward on efforts to confront them. The minority—recognizing the significant gaps in the Committee's consideration of this authorization—decided to proceed in manner that leaves open a way forward for a better process in the next Congress, only days away, one in which the administration can clarify its direction for the long fight against ISIS, particularly in Syria. As we continue this effort not against defined nation-states but against terrorist groups and armies, we are presented with novel challenges. As a result, the authorities and tools our nation needs to succeed may differ from those of past conflicts. It is for this reason that a detailed understanding of the administration's direction in this regard is a necessary component of the Committee's oversight responsibility, particularly in this most grave and serious of issues.

MINORITY VIEWS—SENATOR FLAKE
AUTHORIZATION FOR THE USE OF MILITARY FORCE
AGAINST ISIL

DECEMBER 13, 2014

A joint resolution to authorize the use of military force (AUMF) is perhaps the most important piece of legislation the Committee can consider. Since September, the United States has led a multi-nation coalition to achieve the President’s stated objective to “degrade and ultimately destroy” ISIL. The President has not formally asked Congress to authorize this mission, as is traditional, but he has asked Congress to appropriate funds for it. In the absence of a formal request from the President, I believe Congress should act to authorize the use of military force against ISIL. Such an authorization would signal to our coalition partners that Congress supports the President in his objectives and that the United States, not just the President, is committed to supporting this mission. In this context, I applaud the Chairman for taking the initiative to draft a joint resolution to authorize the use of military force against ISIL in the absence of a formal request from the administration.

While the administration has yet to provide the Committee with proposed text for a joint resolution, the Committee heard testimony from the Secretary of State regarding what the administration would like to include, and not include, in such a joint resolution. Despite the Secretary testifying that the administration does not want a limitation on the use of combat forces in this conflict, the legislation approved by the Committee includes such a limitation. The President has said he will not deploy combat forces but as Commander-in-Chief he may change his mind as conditions warrant. I am concerned that limiting the use of military options from the outset could make it more difficult to achieve the stated objectives of degrading and ultimately destroying ISIL, which is the purpose of this authorization.

I am likewise concerned that approval of this joint resolution to authorize the limited use of military force against ISIL will further damage this Committee’s credibility. This is the second AUMF the Committee has favorably reported in the 113th Congress. The previous AUMF to authorize airstrikes in Syria never received further consideration beyond this Committee, either on the Senate floor, or by the other chamber. This AUMF will suffer the same fate. Those who might be watching the Committee’s proceedings from afar may be left wondering whether this Committee means what it says. They may also question the relevance of the Committee if the authorizations for the use of military force that it approves simply languish. This could lead to disastrous consequences. We need to

consider these authorizations in such a way so as to ensure they keep their meaning. If we do not, our allies—and our adversaries—will not believe in their meaning, either. This Committee should work with the administration in the 114th Congress to craft a joint resolution that will demonstrate the resolve of the United States to degrade and ultimately destroy ISIL.

