S. J. RES. 61

To authorize the use of military force in Iraq and Afghanistan against the Taliban, al Qaeda, and the Islamic State of Iraq and the Levant in order to protect the United States, its territories, and the homeland from attack.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2018

Mr. MERKLEY introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

JOINT RESOLUTION

To authorize the use of military force in Iraq and Afghanistan against the Taliban, al Qaeda, and the Islamic State of Iraq and the Levant in order to protect the United States, its territories, and the homeland from attack.

Whereas it is appropriate for Congress to assert its power under Article I of the Constitution of the United States to declare war, raise and support armies, and maintain an army;

Whereas nothing in this joint resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1541 et seq.);
Whereas the Framers of the Constitution, as outlined in Federalist No. 69, explained the difference between the authorities of the President under the Constitution as Commander-in-Chief and the power of Congress under the Constitution to declare war; and

Whereas the Framers of the Constitution were concerned that vesting too much war-making power in the President would cause the nation to become involved hastily or un-wisely in war: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Constitutional Consideration for Use of Force Resolution.”

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

The President is authorized to use all necessary and appropriate force in Iraq and Afghanistan against the Taliban, al Qaeda, and the Islamic State in Iraq and the Levant (ISIL) in order to protect the United States and its compelling interests (as defined in section 11) from attack by the Taliban, al Qaeda, and the Islamic State in Iraq and the Levant.

SECTION 3. LIMITATIONS.

(a) STATE ACTORS.—This joint resolution does not authorize use of force against any foreign state (as defined in section 11).
(b) **Nonapplicability to Unspecified Entities.**—The authorization provided by section 2 extends only to the entities specified in that section, and does not extend to organizations or forces that the President determines to be associated forces, successor forces, or forces otherwise related to the entities specified in that section.

(c) **Applicability of International Law.**—The authority in this joint resolution may be used only in a manner consistent with the obligations of the United States under international law.

(d) **War Powers Resolution Requirements.**—

(1) **Specific Statutory Authorization.**—Consistent with section 8(a)(1) of the War Powers Resolution (50 U.S.C. 1547(a)(1)), Congress declares that section 2 is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)).

(2) **Applicability of Other Requirements.**—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1541 et seq.).
SEC. 4. NEW GROUPS AND COUNTRIES AND USE OF GROUND FORCES IN A COMBAT ROLE.

(a) USE OF FORCE AGAINST OTHER NON-STATE PARTIES TO THE CONFLICT.—

(1) EXPEDITED CONSIDERATION OF JOINT RESOLUTION TO AUTHORIZE.—A joint resolution to authorize use of force against any organization or force not specified in section 2 (in this joint resolution referred to as a “new group”) shall be eligible for expedited consideration in accordance with the procedures in section 8 (in this section referred to as “expedited consideration”).

(2) LIMITATION.—A joint resolution under this subsection shall not be eligible for expedited consideration unless the new group covered by the joint resolution—

(A) is not a foreign state;

(B) is an organized armed group that has engaged, and continues to be engaged, in active hostilities against the United States as a party to an ongoing armed conflict involving the groups specified in section 2; and

(C) demonstrates a credible ability to conduct a substantial attack against compelling United States interests.

(b) USE OF FORCE IN ADDITIONAL COUNTRIES.—
(1) Expedited Consideration of Joint Resolution to Authorize.—A joint resolution to authorize use of force against the groups specified in section 2, or any new group covered by a joint resolution enacted pursuant to subsection (a), in a country other than those specified in the joint resolution authorizing such use of force (in this section referred to as a “new country”) shall be eligible for expedited consideration.

(2) Limitation.—A joint resolution described by paragraph (1) that also authorizes use of ground forces in a combat role shall not be eligible for expedited consideration.

(c) Expedited Consideration of Joint Resolution To Authorize Use of Ground Forces in Combat Role in Additional Countries.—A joint resolution to authorize use of ground forces in a combat role in a new country for which authorization of use of force has been provided under subsection (b) shall be eligible for expedited consideration.

(d) Ground Forces in a Combat Role.—For purposes of this section, ground forces in a combat role do not include the following:

(1) Small detachments of special operations forces.
(2) Any other forces deployed under any authority other than the authority in this joint resolution.

(e) PRESIDENTIAL REQUEST.—To be eligible for expedited consideration, a joint resolution described in subsection (a), (b), or (c) must be requested in writing by the President to the appropriate congressional committees and leadership, together with a written justification of the manner which such joint resolution meets the applicable criteria in such subsection.

(f) SEPARATE JOINT RESOLUTION REQUIRED FOR EACH AUTHORIZATION.—To be eligible for expedited consideration, a separate joint resolution is required for each new group, each new country, and each use of ground forces in a combat role in a new country.

SEC. 5. SUNSET UPON CESSATION OF THREAT.

(a) REPORTS ON CONTINUING THREATS.—Not later than six months after the date of the enactment of this joint resolution, and every six months thereafter, the President shall, in consultation with the Secretary of Defense, the Secretary of State and the Director of National Intelligence, submit to the appropriate congressional committees and leadership a report certifying whether or not each group specified in section 2, and each new group against which use of force is currently authorized by this
joint resolution pursuant to section 4(a), continues to meet the criteria set forth in section 4(a)(2).

(b) SUNSET.—If the President does not certify under subsection (a) that a group described in that subsection continues to meet the criteria set forth in section 4(a)(2), the authorization in this joint resolution to use force against such group shall cease, effective as of the date that is 60 days after the date the certification is due.

c) CONSTRUCTION.—The cessation of authority to use force against a group under subsection (b) shall not be construed as the cessation of authority to use force pursuant to this joint resolution against any other group specified in section 2, or against any new group covered by section 4(a) against which force is being used pursuant to this joint resolution at the time of such cessation of authority.

SEC. 6. DURATION OF AUTHORIZATION.

(a) IN GENERAL.—The authorization for use of force in this joint resolution shall expire on the date that is three years after the date of the enactment of this joint resolution.

(b) REPORT.—Not later than 90 days before the expiration date provided for in subsection (a), the President shall submit to Congress a report on use of force pursuant to this joint resolution. The report may include rec-
ommendations of the President for extension, whether
with or without modification, of this joint resolution.

(c) PROCEDURES FOR ENACTMENT.—Any joint reso-
lution to extend this joint resolution, whether with or with-
out modification, shall be eligible for expedited consider-
ation in accordance with the procedures in section 8.

SEC. 7. REPORTING AND PUBLIC NOTICE REQUIREMENTS.

(a) IN GENERAL.—Not later than six months after
the date of the enactment of this joint resolution, and
every six months thereafter, the President shall submit to
the appropriate congressional committees and leadership,
and shall publish in the Federal Register, a report setting
forth the following:

(1) A list of the groups, organizations, and
forces against which the United States is using force
pursuant to this joint resolution as of the date of
submittal and publication.

(2) For each group, organization, and force list-
ed under paragraph (1)—

(A) the extent to which such group, orga-
nization, or force directly targeted any compel-
ing United States interest during the six-
month period ending on the date of submittal
and publication (in this section referred to as
the “reporting period”); and
(B) the extent to which such group, organization, or force continues to pose a threat to any compelling United States interest as of the date of submittal and publication.

(3) A list of the countries in which the United States used force pursuant to this joint resolution during the reporting period, including the geographic location in each country in which the United States so used force.

(4) The number of combatant casualties in connection with the use of force pursuant to this joint resolution during the reporting period.

(5) The number of civilian casualties in connection with the use of force pursuant to this joint resolution during the reporting period, as determined by the following:

(A) The United States Government.

(B) Credible and reliable nongovernmental entities.

(6) An explanation for the differences, if any, between the number of civilian casualties reported pursuant to paragraph (5)(A) during the reporting period and the number of civilian casualties reported pursuant to paragraph (5)(B) during the reporting period.
(7) A description of the mechanisms used to prevent and limit civilian casualties in connection with the use of force pursuant to this joint resolution during the reporting period.

(8) A current description of the process by which the United States investigates allegations of civilian casualties resulting from United States military operations.

(9) A description of the current national security, diplomatic, development, and humanitarian goals of the United States for each country listed under paragraph (3) in order to create the conditions for the end of use of United States military force in such country, and the strategy and expected timeline to execute such goals.

(10) An assessment, as of the date of submittal and publication, of the bilateral and multilateral impact of United States use of force pursuant to this joint resolution in each country listed under paragraph (3), and an assessment of the engagement of the government of such country with United States use of force in such country.

(11) A comprehensive and current description, both for the reporting period and in aggregate as of the date of submittal and publication, of the
amounts expended by the United States for and in
support of military operations and activities in con-
nection with use of force pursuant to this joint reso-
lution.

(b) FORM.—
(1) IN GENERAL.—Each report under sub-
section (a) shall be submitted in unclassified form.

(2) CLASSIFIED FORM.—Except as provided in
paragraph (3), portion of a report under subsection
(a) may be submitted in classified form if strictly re-
quired to protect the national security interests of
the United States.

(3) CERTAIN INFORMATION ONLY IN UNCLASSI-
FIED FORM.—The information required by sub-
section (a)(1), and the countries listed pursuant to
subsection (a)(3), shall be submitted in unclassified
form.

(c) BRIEFINGS.—The Department of Defense shall
provide a briefing to any appropriate congressional com-
mittee or leadership upon request of such committee or
leadership not less often than every six months on activi-
ties undertaken pursuant to this joint resolution.
SEC. 8. EXPEDITED PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.

(a) In General.—A resolution specified in subsection (b) shall be eligible for consideration using expedited procedures specified in this section.

(b) Resolutions.—A resolution specified in this subsection is any joint resolution as follows:

(1) A joint resolution covered by section 4.

(2) A joint resolution to extend, whether with or without modification, this joint resolution, as provided for in section 6.

(c) Referral.—A resolution described in subsection (b) introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate. A resolution described in subsection (b) that is introduced in the House of Representatives shall be referred to the Committee on Foreign Affairs of the House of Representatives.

(d) Discharge.—If the committee to which a resolution described in subsection (b) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date of introduction, such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(e) Consideration.—
(1) IN GENERAL.—On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (d)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member’s intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to
the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 30 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.
(4) Appeals from decisions of Chair.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(f) Consideration by Other House.—

(1) In general.—If, before the passage by one House of a resolution of that House described in subsection (b), that House receives from the other House a resolution described in subsection (b), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (b) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.
(2) Following disposition.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(g) Rules of the Senate and House of Representatives.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (b), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 9. REPEAL OF AUTHORIZATION FOR USE OF MILITARY FORCE.

The Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224; 50 U.S.C. 1541 note) is hereby repealed, effective six months after the date of the enactment of this joint resolution.
SEC. 10. REPEAL OF AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002.


SEC. 11. DEFINITIONS.

In this joint resolution:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means—

(A) the majority leader and the minority leader of the Senate;

(B) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate;

(C) the Speaker of the House of Representatives and the minority leader of the House of Representatives; and

(D) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.
(2) **Compelling United States interests.**—The term “compelling United States interests” means the following:

(A) United States territory.

(B) The United States Armed Forces.

(C) United States citizens.

(3) **Foreign state.**—The term “foreign state” has the meaning given that term in section 1603(a) of title 28, United States Code, namely a foreign state, a political subdivision of a foreign state, or an agency or instrumentality of a foreign state (as that term is defined in section 1603(b) of such title).