

OPINION

Senate Should Protect War Powers on Libya

BY LOUIS FISHER

Guest Observer

On June 3, the House of Representatives debated and voted on two resolutions that criticized President Barack Obama for not seeking legislative authorization for the war in Libya. Again on June 24, the House debated two other measures that rebuked Obama. The Senate has yet to take any floor action, although on June 28 the Foreign Relations Committee held a hearing on "Libya and War Powers."

The difference between the two chambers is remarkable. Because of its constitutional role with treaties and the appointment of ambassadors, the Senate supposedly has a more prominent role in foreign affairs than the House. But the House came to the floor first on this war powers issue and its resolutions are significantly stronger in terms of defending legislative interests than the rival Senate bills that have been introduced but not yet acted upon.

Democrats and Republicans in the House strongly object to Obama's failure to seek authorization for the military action in Libya from Congress. The first June 3 resolution, introduced by Rep. Dennis Kucinich (D-Ohio) with Republican cosponsors, directed the removal of U.S. armed forces from Libya within 15 days of the resolution's adoption. It failed 148-265. Introduced as a concurrent resolution, it would not have been legally binding. At most, it would have expressed the sentiments of the two chambers.

The second House resolution was introduced by Speaker John Boehner (R-Ohio) and adopted 268-145. It noted that President Obama "failed to provide Congress with a compelling rationale" for military activities in Libya and directed Obama within 14 days to describe "in detail" U.S. security interests and objectives in Libya and explain why he did not seek "authorization by Congress for the use of military force in Libya."

As a House resolution, Boehner's measure offered only the sentiments of that chamber and had no legal force. However, it would have been politically costly for President Obama to ignore it. Many House Members from both parties believe he has acted contemptuously toward the legislative branch. Obama submitted his letter and accompanying report to Boeh-

ner on June 15.

Boehner's resolution concluded: "Congress has the constitutional prerogative to withhold funding for any unauthorized use of the United States Armed Forces, including for unauthorized activities regarding Libya." A competing Senate measure, S.Res. 194, was far more deferential to presidential power and executive control over the war power. It expressed no concern about the lack of Congressional authorization for the war in Libya. Instead, it merely requested Obama "to consult regularly with Congress regarding United States efforts in Libya."

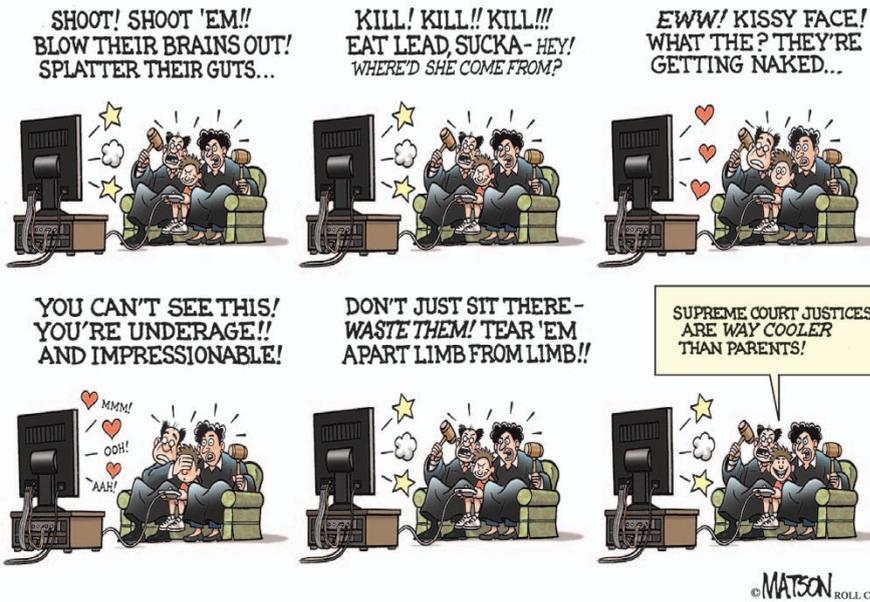
The framers did not expect the president to merely "consult" with lawmakers when taking the country from a state of peace to a state of war. The president needed either a formal declaration of war

Why are Senators not exercising their duty to scrutinize?

or statutory authorization.

The Senate resolution accepted the administration's position that military action in Libya was authorized by U.N. Security Council Resolution 1973. Neither House resolution regarded U.N. resolutions as a constitutional substitute for Congressional authorization. The Senate resolution agreed that the goal of U.S. policy in Libya, "as stated by the President, is to achieve the departure from power of Muammar Qaddafi and his family." Regime change was not part of Obama's promised "limited" action or Security Council Resolution 1973. Subsequent Senate legislation, S.J.Res. 20 introduced on June 21, is designed to authorize U.S. armed force in Libya for an additional year. A series of "whereas" clauses accepts Security Council resolutions as "mandates" for U.S. military action. The joint resolution agrees that "the goal of United States policy in Libya, as stated by the President," is to drive Gadhafi from power. Nothing in the Senate resolution objects to Obama starting the war on his own and failing to seek authorization from Congress.

The two House actions on June 24 were quite extraordinary. The chamber voted



down a resolution that would have authorized U.S. military action in Libya 123-295, with 70 Democrats joining Republicans voting no. A separate measure, to provide limited financing for the war, was rejected 180-238. Only 36 Democrats favored this bill.

Critics of the House action called the two votes a "mixed message." Yet the legislative communication was quite clear on the fundamental point of whether to authorize and fund the war. On both counts: no. There was deep resentment from Democrats and Republicans to Obama's constitutional position that he did not need Congressional authorization. A bipartisan group of House Members plans a subsequent vote to cut funding for the war.

In terms of legislative remedies, the House is moving toward the protection of Congressional authority. The Senate is not. Why are Senators not exercising their independent duty to scrutinize and check presidential usurpations of the war power which the Constitution vests in Congress? Members of Congress take an oath of office to support and defend the Constitution, not to support and defend the president. Unless each branch fights off encroachments by another branch, the system of checks and balances designed to safeguard constitutional liberties cannot function.

Louis Fisher is author of "Presidential War Power." Before retiring last year from the Library of Congress, he worked for four decades with lawmakers and committees on a range of constitutional issues, including the war power.

QUOTABLE

"If we are going to put lives at risk, we do that far better as one nation than as one man."

Lowell P. Weicker Jr.
(1931-)

Former Connecticut Congressman, Senator and governor in an argument against the War Powers Act in a Senate debate, Oct. 20, 1987

"I am against giving the power of war to the Executive, because he is not safely to be trusted with it."

George Mason
(1725-1792)

Member of the Virginia and federal constitutional conventions, 1787

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