Senate Should Protect War Powers on Libya

By Louis Fisher

On June 15, the House of Representatives adopted two resolutions that criticized President Barack Obama for not seeking legislative authorization for the war in Libya. Again on Wednesday, the House voted on two similar but unrelated 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 co-sponsors, 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.

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. It had no legal force. However, 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. It had no legal force. However, it would have expressed the sentiments of the two chambers.

Why are Senators not exercising their duty to scrutinize?

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 forces 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, but with 70 Democrats joining Republicans voting no. A separate measure, to provide limited financing for the war, was rejected 186-238. Only 36 Democrats favored this bill.

Critics of the House action called the 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 resentlement 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.

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.”


“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