

Testimony of Rep. Chris Gibson (NY20)  
House Committee on Foreign Affairs

“War Powers, United States Operations in Libya, and Related  
Legislation”

Wednesday, May 25, 2011

I would like to begin by thanking the Chairwoman, the Ranking member, and members of the Committee for holding this hearing. I sincerely appreciate the opportunity to come before the Committee to address what I believe is a pressing issue facing our country today.

While the debate over Presidential War Powers has resurfaced as a result of the ongoing operations in Libya, as those assembled here today know full well, the ambiguity surrounding this issue has been a source of controversy for decades, despite (and perhaps in spite of) the War Powers Act passed over the president's veto in 1973.

Last Friday marked 60 days since the administration began operations in Libya and we are now not in compliance with the War Powers Act. While it is somewhat encouraging that in recent days the President has taken the steps to obtain Congressional approval, it is unclear why he waited until the 60-day period had passed, and why he sought approval from several international organizations prior to the mission, but failed to consult or seek statutory authorization from Congress.

In view of the War Powers Act, I believe the President's actions are on dubious constitutional grounds but I want to be clear, this is not a new phenomenon. Presidents from both parties have been on dubious grounds with regard to the War Powers Act, perhaps not surprising given that no President since its enactment has acknowledged its constitutionality. It's time to bring clarity to the situation and to resolve the matter of Presidential War Powers.

As a student of history and former professor of American Government, I frequently turn to the Federalist Papers, the Notes on the Constitutional Debate, and the Constitution itself to derive the intent of our Founders. It is my belief that the Founders envisioned a shared role between the Executive and Legislative branches with regard to making war. Ever concerned about unchecked power, especially unchecked executive power, the Founders invested in the Congress the power to declare war. The American people would have say in the solemn decision on use of force through their duly elected Representatives (Federalist Paper # 69). The Founders also envisioned "energy in the executive" (Federalist Paper # 70) and the ability to defend the country and lead our armed forces in time of war by investing in the President the responsibilities of commander-in-chief. As political scientist and presidential historian Richard Neustadt noted, the Founders set up a constitutional design where "separate institutions shared power."

Since World War II, and in part as a result of the Cold War, the existential threat from the Soviet Union and the specter of nuclear war, over the time these war powers have accumulated in the executive branch, this recent operation in Libya being only the latest example of executive fiat. It's time to restore balance to the executive-legislative branch relationship and bring back in the voice of the American people on matters of war and use of force. It's time to reform the War Powers Act.

#### The War Powers Reform Act:

Recently, I introduced legislation that fundamentally amends the War Powers Act (WPA). My bill, H.R. 1609, the *War Powers Reform Act*, strikes a new balance between the

Legislative and Executive branch, and returns our Republic to a point the Founders intended, where the two branches share responsibility regarding the use of force.

Seeking to restore the Founders' intent, this legislation amends the War Powers Act to clarify when the president has the authority to deploy our armed forces in to hostile circumstances. The bill empowers the President to act under the following circumstances: a declaration of war; specific statutory authorization from Congress, including obligation under a treaty (as previously agreed to by Act of Congress); a national emergency created by attack, or imminent threat of attack upon any of the United States, its territories or possessions, or its armed forces.

The most significant provision in my bill is a new section regarding the limitation on the use of funds. If none of these foregoing circumstances are met, the President may not obligate or expend funds to deploy the armed forces of the US. The 60/90 day provisions in the current WPA are deleted. Over the years these provisions have proven vague, ineffective and counter-productive to the intent of the WPA. This new provision regarding prohibition of funds provides a much-needed enforcement mechanism and reasserts Congressional authority in both authorizing funds as well as making war. As seen in the current operations in Libya, the Executive currently has the ability to cost shift with funds already appropriated and then subsequently reprogramming or requesting funds after actions are complete. The administration's ability to do so denies the American people their voice in authorizing military action.

Among other new provisions added by my bill, Section 2 (c) of the WPA is amended to allow Presidential action if the nation is under *imminent threat of attack*, something absent in the original bill. In this instance, imminent threat is defined as credible intelligence that a hostile force is about to attack our country. Other changes to the War Powers Act include the elimination of antiquated reporting requirements, which are no longer needed because the Executive would be prohibited from acting without first seeking Congressional authorization.

Finally, the *War Powers Reform Act* contains an exemption for the state of Israel in the event that they are attacked. Thus, in essence, a vote for this Bill is tantamount to providing the Executive with the authority to defend one of our closest and most vulnerable allies. To date, the United States does not have a Senate-confirmed mutual defense treaty with Israel. While it is virtually impossible to foresee events and threats in a constantly evolving world, the need to immediately defend one of our greatest partners is one we can envision.

In conclusion, while this Bill responds to the situation in Libya, the broader intent is to restore balance to the Executive-Legislative Branch relationship on matters of war powers. I look forward to dialoguing with the committee and urge that in the aftermath of this hearing that you move to mark-up this Bill. I am certainly open to amendment and look forward to your thoughts on that score. Our country needs this War Powers Reform Act. Again, thank you for having me before the committee, and I welcome your comments and questions.