

DIRECTING THE SECRETARY OF STATE TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES COPIES OF ANY DOCUMENT, RECORD, MEMO, CORRESPONDENCE, OR OTHER COMMUNICATION OF THE DEPARTMENT OF STATE, OR ANY PORTION OF SUCH COMMUNICATION, THAT REFERS OR RELATES TO ANY CONSULTATION WITH CONGRESS REGARDING OPERATION ODYSSEY DAWN OR MILITARY ACTIONS IN OR AGAINST LIBYA

MAY 12, 2011.—Referred to the House Calendar and ordered to be printed

Ms. ROS-LEHTINEN, from the Committee on Foreign Affairs, submitted the following

R E P O R T

[To accompany H. Res. 209]

The Committee on Foreign Affairs, to whom was referred the resolution (H. Res. 209) directing the Secretary of State to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of State, or any portion of such communication, that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or military actions in or against Libya, having considered the same, report favorably thereon with amendments and recommend that the resolution as amended be agreed to.

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THE AMENDMENTS

The amendments are as follows:

Strike all after the resolving clause and insert the following:

That the House of Representatives directs the Secretary of State to transmit to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, copies of any official document, record, memo, correspondence, or

other communication of the Department of State in the possession of the Secretary of State that was created on or after February 15, 2011, and refers or relates to any of the following:

- (1) Consultation or communication with Congress regarding the employment or deployment of the United States Armed Forces for Operation Odyssey Dawn or NATO Operation Unified Protector.
- (2) The War Powers Resolution and Operation Odyssey Dawn or Operation Unified Protector.

Amend the title so as to read:

Resolution directing the Secretary of State to transmit to the House of Representatives copies of any official document, record, memo, correspondence, or other communication of the Department of State in the possession of the Secretary of State that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or NATO Operation Unified Protector.

PURPOSE AND BACKGROUND

On March 21, 2011, the President reported to Congress “consistent with the War Powers Resolution,” that on March 19, 2011, he had directed U.S. military forces to commence “operations to assist an international effort authorized by the United Nations Security Council and undertaken with the support of European allies and Arab partners, to prevent a humanitarian catastrophe and address the threat posed to international peace and security by the crisis in Libya.”¹ He described “a series of strikes against air defense systems and military airfields for the purposes of preparing a no-fly zone.” The strikes, to be “limited in their nature, duration, and scope,” were intended “to support an international coalition as it takes all necessary measures to enforce the terms of U.N. Security Council Resolution 1973.”² In his March 28, 2011 address to the nation, the President asserted that the United States has “an important strategic interest in preventing Qaddafi from overrunning those who oppose him,” and also noting the potential impact of refugee flows on neighboring Egypt and Tunisia.

House Resolution 209 directs the Secretary of State to transmit to the House of Representatives copies of all State Department documents or records (including telephone records, electronic and email communications, and records of internal discussions) related to the intervention of United States forces in Libya that began on March 19, 2011 that deal with the Department’s consultations with Congress or its discussions of the War Powers Resolution of 1973.

According to the rules and precedents of the House, House Resolution 209 is a resolution of inquiry, which is one of a number of means by which the House may seek information from the Executive Branch. According to *Deschler’s Precedents*, resolutions of inquiry are “usually simple resolutions used to obtain information from the executive branch . . . [that] are given privileged status in the House, provided they seek information of a factual nature, rather than request opinions or require an investigation on the subject.”³ Their efficacy relies on the comity extended by one branch of government to another, and not from any enforceable legal obligation. The passage of a resolution of inquiry does not

¹March 21, 2011 letter from the President to the Speaker of the House of Representatives. Available online at: <http://www.whitehouse.gov/the-press-office/2011/03/21/letter-president-regarding-commencement-operations-libya>.

²Id.

³*Deschler’s Precedents*, H. Doc. 94–661, 94th Cong., 2d Sess., vol. 4, ch. 15, section 2.

override any legal or constitutional privilege that may be afforded to the documents it seeks.

Pursuant to rule XIII, clause 7 of the Rules of the House of Representatives, the Committee must report a resolution of inquiry to the House within 14 legislative days after its introduction (exclusive of the days of introduction and discharge), or a privileged motion to discharge the Committee is in order. House Resolution 209 was introduced on April 7, 2011.

In light of the already robust oversight by the Committee on Foreign Affairs of developments in Libya and U.S.-Libya policy, before and after the recent U.S. intervention in Libya, it is unclear that the documentation sought by the resolution would add to Congressional understanding of these issues.

In addition, the extensive scope of the introduced text of the resolution (which purports to reach all “communication, including telephone records, electronic communications, email, logs and calendars, and the records of internal discussions”) is open to question. Questions of privilege aside, given the resolution’s basis in comity, it is difficult to imagine that Congress would be comfortable with reciprocal disclosure expectations of such intrusive specificity. Thus, the Committee-adopted amendment relates to “copies of any official document, record, memo, correspondence, or other communication of the Department of State.”

There are diverse views among Members about the wisdom and legality of Operation Odyssey Dawn and the use of U.S. military force inside Libya. But whatever one thinks about the propriety of the initiation of those actions, the most salient facts in terms of constitutional or War Powers analysis are what the Administration in fact does (in terms of consultation, deployment, reporting, etc.). The full range of those legal issues, along with policy questions about U.S. end-state and objectives in Libya, have been—and will continue to be—a subject of inquiry and oversight by the Committee on Foreign Affairs, as described below.

Since the commencement of military action, U.S. and then NATO-led air strikes in Libya have largely enforced a no-fly zone and arms embargo against the Qaddafi regime, but have not definitively changed the balance of power between Qaddafi’s loyalist forces and opposition fighters.

As of May 11, 2011, the NATO air mission has conducted nearly 6,100 sorties, including over 1,900 strike sorties, since assuming control of the operation on March 23rd. The NATO maritime component has conducted more than 750 hailings in the embargo area, boarded 26 ships, and turned away 5 ships.

France and the United Kingdom have called for expanded military operations against pro-Qaddafi forces in the face of continued faltering by anti-Qaddafi elements. Others, including Germany, question the logic of and authority for expanded military operations, favoring greater emphasis on humanitarian support and the enforcement of sanctions and the arms embargo. The African Union continues to press for a peace deal that was accepted by Qaddafi but rejected by the opposition because it would leave Qaddafi in power. Some Libyan opposition members have indicated they will not support the participation of any former government official in any future transitional political arrangement. Turkey also has offered a proposal with three elements: establishing an immediate

and verifiable ceasefire; securing humanitarian aid corridors; and advancing a political process for a transition. Turkey has not provided a detailed implementation strategy but has made it clear that Qaddafi must leave Tripoli.

On May 5, 2011, and hosted by Italy and Qatar, the second meeting of the Libya Contact Group was held in Rome. Twenty-two countries participated, as well as representatives from the United Nations, European Union, NATO, Arab League, Organization of the Islamic Conference, Gulf Cooperation Council, African Union, and the World Bank. Qatar took the opportunity to formally propose arming the rebels. While no agreement was reached on arms, members agreed to create a Temporary Financial Mechanism (TFM) through which humanitarian and other financial assistance would flow to rebel-controlled areas. The TFM will be administered by a steering committee composed of three Libyans chosen by the Transitional National Council (TNC), a representative of Qatar, and a representative from Italy or France on a six-month rotating basis. The TNC had been seeking \$3 billion and warned that they were running “perilously” short of money to buy food, medicine, and gasoline, and to pay government salaries in the areas they control.

The United States authorized a drawdown of up to \$25 million in existing Department of Defense stocks to assist the TNC, including assorted medical first aid kits, stretchers, bandages and dressings, surgical tape, blankets, ready to eat meals, tents, sleeping bags, canteens, uniforms, boots, tactical load-bearing vests, helmets, maps, binoculars, hand-held radios, and infra-red glint tape for better identification by NATO forces, and a handful of other similar items.

An additional \$53.5 million in humanitarian assistance was provided to organizations providing relief for refugees in surrounding countries. It is estimated that over 750,000 people have fled to neighboring Chad, Egypt, Niger, Algeria and Tunisia since the start of the crisis in February. Additionally, approximately 200,000 internally displaced persons (IDPs) from Brega, Ras Lanuf, and Ajdabiya are in eastern Libya.

The Committee on Foreign Affairs continues to engage in detailed and ongoing oversight over the purpose and recipients of such assistance.

On May 5th, it was reported that the Administration will seek legislation to allow them to “vest,” or confiscate, “assets and property held by the government of Libya, including the Central Bank of Libya, in the jurisdiction of the United States and invest all or part of that in any agency or individual designated by the President to provide humanitarian relief and protect civilians in Libya.” The United States currently holds \$33 billion in frozen Libyan assets and property, of which \$150 million has been proposed for vesting. Qaddafi has condemned the proposal as “piracy.”

Congressional staff briefings were held on Wednesday, May 11th to discuss the disposition of Libyan assets.

Questions have been raised at various Committee hearings and briefings, and continue to be raised, about who the opposition is and what their ultimate objectives might be, beyond removing Qaddafi from power. The Interim Transitional National Council (TNC) is an opposition coalition reportedly formed to represent

Libyans from its base in Benghazi. The extent of the group's domestic political legitimacy and authority is unclear, although its stated aspirations and appeals are addressed to all Libyans and its claims have been endorsed by some Libyans abroad, including some Libyan expatriate groups in Europe and the United States. The TNC claims many of the local and regional citizen councils that formed across Libya in the wake of the uprising have endorsed the Council and its agenda.

However, limited information is available to U.S. agencies about the TNC's relationships with emergent opposition leaders, particularly in western Libya, where TNC leaders have claimed their identities need to remain secret for their protection.

Qaddafi and his supporters have accused his opponents, including the TNC, of having an eastern regional separatist agenda and of serving as a front for Al Qaeda. The TNC has denied these accusations, stressing its broad nationalist orientation and denying formal connections to religious militants, while acknowledging that some Islamists, including former Libyan Islamic Fighting Group members, are involved in military operations against pro-Qaddafi forces.

The process of assessing TNC leaders and the totality of the Qaddafi opposition is ongoing by the Executive Branch and consultations continue between the Administration and the Committee on the U.S. approach to the Libyan opposition.

In the days and weeks ahead, with regard to Libya and elsewhere, the Committee on Foreign Affairs intends to continue active oversight of its core jurisdiction under House Rule XI concerning relations of the United States with foreign nations generally, including interventions abroad and declarations of war.

OVERSIGHT AND HEARINGS

The Committee's attention to Libya predated the March 19, 2011 deployment of U.S. forces there, and certainly has continued since that time.

Prompted by political developments inside Libya in February, the Committee requested and received a staff briefing by the Central Intelligence Agency on Libya and other Middle East/North African flashpoints on February 25, 2011.

On February 28, 2011, Committee staff participated in the first of continuing, weekly interagency conference call briefings on the democracy, conflict, humanitarian, and refugee situations in the region, which was followed by additional briefings on March 8, March 15, March 22, and March 29.

On March 22, 2011, three days after U.S. forces began operations inside Libya (and following Committee requests for a briefing), the National Security Council, the Department of State, and the Department of Defense briefed designated House and Senate Leadership and Committee staff.

On Wednesday, March 30, 2011, a House-wide, classified briefing on U.S. involvement in Libya was held for all interested House Members by Secretary of State Clinton, Secretary of Defense Gates, and other Administration officials.

On Thursday, March 31, 2011, the full Committee held a hearing on "Libya: Defining U.S. National Security Interests" where Members probed in detail the justifications, scope, and objectives of U.S.

intervention in Libya with Deputy Secretary of State James B. Steinberg.

On April 1, 2001, the Foreign Affairs Committee held a Members' Ambassadorial roundtable on developments in Libya, Egypt, and Iran.

On April 7, 2011, the full Committee held a hearing on the United Nations with Ambassador Susan Rice, which included discussion of the UN-sanctioned no-fly zone over Libya.

Also on April 7, telephone pre-consultations regarding the President's intent to exercise drawdown authority to provide non-lethal assistance in Libya prompted a Committee request for a classified briefing.

On April 13, 2011, the Subcommittee on Middle East and South Asia held a hearing on "Shifting Sands: Political Transitions in the Middle East, Part I" that addressed the situation in Libya with a panel of private experts.

On April 15, 2011, the Committee received a memorandum of justification for the President's proposed drawdown to protect civilian-populated areas under attack in Libya, and held a classified briefing on that subject on April 19, 2011.

Weekly interagency staff briefings on the regional democracy, conflict, human rights, and refugee situations continued through the month of April, and beyond (on April 5, April 12, April 19, April 26, and May 3, 2011).

On May 5, 2011, the Subcommittee on Middle East and South Asia held a hearing on "Shifting Sands: Political Transitions in the Middle East, Part II" that addressed the situation in Libya and U.S. involvement, with the Assistant Secretary of State for Democracy, Human Rights, and Labor, and the Deputy Assistant Secretary of State for Near Eastern Affairs.

The Committee had scheduled a May 11, 2011 House-wide briefing for Members on "War Powers and the United States Operations in Libya," with noted legal experts on those issues, which had to be postponed at the last minute due to the House floor schedule. The Committee currently intends to reschedule that briefing for a date in the near future.

On May 11, 2011, the Speaker's Office hosted a briefing for staff of the Committees on Foreign Affairs, Financial Services, and Appropriations on a proposal for the disposition of frozen Libyan assets.

COMMITTEE CONSIDERATION

On May 11, 2011, the Committee on Foreign Affairs considered H. Res. 209, pursuant to notice, in open session, and agreed to a motion to report the resolution to the House favorably, with amendments, by voice vote.

NEW BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that no such statement is required because H. Res. 209 does not provide for any new budget authority, any new spending authority, any new credit authority, or an increase or decrease in revenues or tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee states, with respect to H. Res. 209, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 402 of the Congressional Budget Act of 1974.

PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that no such statement is required because H. Res. 209 does not contain any authorization of funding.

CHANGES IN EXISTING LAW

No change in existing law is proposed by this resolution.

