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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 unwisely in war: Now, therefore, be it

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES**
7 **ARMED FORCES.**

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

15 **SEC. 3. LIMITATIONS.**

16 (a) STATE ACTORS.—This joint resolution does not
17 authorize use of force against any foreign state (as defined
18 in section 11).

1 (b) NONAPPLICABILITY TO UNSPECIFIED ENTI-
2 TIES.—The authorization provided by section 2 extends
3 only to the entities specified in that section, and does not
4 extend to organizations or forces that the President deter-
5 mines to be associated forces, successor forces, or forces
6 otherwise related to the entities specified in that section.

7 (c) APPLICABILITY OF INTERNATIONAL LAW.—The
8 authority in this joint resolution may be used only in a
9 manner consistent with the obligations of the United
10 States under international law.

11 (d) WAR POWERS RESOLUTION REQUIREMENTS.—

12 (1) SPECIFIC STATUTORY AUTHORIZATION.—
13 Consistent with section 8(a)(1) of the War Powers
14 Resolution (50 U.S.C. 1547(a)(1)), Congress de-
15 clares that section 2 is intended to constitute spe-
16 cific statutory authorization within the meaning of
17 section 5(b) of the War Powers Resolution (50
18 U.S.C. 1544(b)).

19 (2) APPLICABILITY OF OTHER REQUIRE-
20 MENTS.—Nothing in this joint resolution supersedes
21 any requirement of the War Powers Resolution (50
22 U.S.C. 1541 et seq.).

1 **SEC. 4. NEW GROUPS AND COUNTRIES AND USE OF**
 2 **GROUND FORCES IN A COMBAT ROLE.**

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

5 (1) EXPEDITED CONSIDERATION OF JOINT RES-
 6 OLUTION TO AUTHORIZE.—A joint resolution to au-
 7 thorize use of force against any organization or force
 8 not specified in section 2 (in this joint resolution re-
 9 ferred to as a “new group”) shall be eligible for ex-
 10 pedited consideration in accordance with the proce-
 11 dures in section 8 (in this section referred to as “ex-
 12 pedited consideration”).

13 (2) LIMITATION.—A joint resolution under this
 14 subsection shall not be eligible for expedited consid-
 15 eration unless the new group covered by the joint
 16 resolution—

17 (A) is not a foreign state;

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

23 (C) demonstrates a credible ability to con-
 24 duct a substantial attack against compelling
 25 United States interests.

26 (b) USE OF FORCE IN ADDITIONAL COUNTRIES.—

1 (1) EXPEDITED CONSIDERATION OF JOINT RES-
2 OLUTION TO AUTHORIZE.—A joint resolution to au-
3 thorize use of force against the groups specified in
4 section 2, or any new group covered by a joint reso-
5 lution enacted pursuant to subsection (a), in a coun-
6 try other than those specified in the joint resolution
7 authorizing such use of force (in this section re-
8 ferred to as a “new country”) shall be eligible for
9 expedited consideration.

10 (2) LIMITATION.—A joint resolution described
11 by paragraph (1) that also authorizes use of ground
12 forces in a combat role shall not be eligible for expe-
13 dited consideration.

14 (c) EXPEDITED CONSIDERATION OF JOINT RESOLU-
15 TION TO AUTHORIZE USE OF GROUND FORCES IN COM-
16 BAT ROLE IN ADDITIONAL COUNTRIES.—A joint resolu-
17 tion to authorize use of ground forces in a combat role
18 in a new country for which authorization of use of force
19 has been provided under subsection (b) shall be eligible
20 for expedited consideration.

21 (d) GROUND FORCES IN A COMBAT ROLE.—For pur-
22 poses of this section, ground forces in a combat role do
23 not include the following:

24 (1) Small detachments of special operations
25 forces.

1 (2) Any other forces deployed under any au-
2 thority other than the authority in this joint resolu-
3 tion.

4 (e) **PRESIDENTIAL REQUEST.**—To be eligible for ex-
5 pedited consideration, a joint resolution described in sub-
6 section (a), (b), or (c) must be requested in writing by
7 the President to the appropriate congressional committees
8 and leadership, together with a written justification of the
9 manner which such joint resolution meets the applicable
10 criteria in such subsection.

11 (f) **SEPARATE JOINT RESOLUTION REQUIRED FOR**
12 **EACH AUTHORIZATION.**—To be eligible for expedited con-
13 sideration, a separate joint resolution is required for each
14 new group, each new country, and each use of ground
15 forces in a combat role in a new country.

16 **SEC. 5. SUNSET UPON CESSATION OF THREAT.**

17 (a) **REPORTS ON CONTINUING THREATS.**—Not later
18 than six months after the date of the enactment of this
19 joint resolution, and every six months thereafter, the
20 President shall, in consultation with the Secretary of De-
21 fense, the Secretary of State and the Director of National
22 Intelligence, submit to the appropriate congressional com-
23 mittees and leadership a report certifying whether or not
24 each group specified in section 2, and each new group
25 against which use of force is currently authorized by this

1 joint resolution pursuant to section 4(a), continues to
2 meet the criteria set forth in section 4(a)(2).

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

9 (c) CONSTRUCTION.—The cessation of authority to
10 use force against a group under subsection (b) shall not
11 be construed as the cessation of authority to use force pur-
12 suant to this joint resolution against any other group spec-
13 ified in section 2, or against any new group covered by
14 section 4(a) against which force is being used pursuant
15 to this joint resolution at the time of such cessation of
16 authority.

17 **SEC. 6. DURATION OF AUTHORIZATION.**

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

22 (b) REPORT.—Not later than 90 days before the expi-
23 ration date provided for in subsection (a), the President
24 shall submit to Congress a report on use of force pursuant
25 to this joint resolution. The report may include rec-

1 ommendations of the President for extension, whether
2 with or without modification, of this joint resolution.

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

7 **SEC. 7. REPORTING AND PUBLIC NOTICE REQUIREMENTS.**

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

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

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

20 (A) the extent to which such group, orga-
21 nization, or force directly targeted any compel-
22 ling United States interest during the six-
23 month period ending on the date of submittal
24 and publication (in this section referred to as
25 the “reporting period”); and

1 (B) the extent to which such group, orga-
2 nization, or force continues to pose a threat to
3 any compelling United States interest as of the
4 date of submittal and publication.

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

10 (4) The number of combatant casualties in con-
11 nection with the use of force pursuant to this joint
12 resolution during the reporting period.

13 (5) The number of civilian casualties in connec-
14 tion with the use of force pursuant to this joint reso-
15 lution during the reporting period, as determined by
16 the following:

17 (A) The United States Government.

18 (B) Credible and reliable nongovernmental
19 entities.

20 (6) An explanation for the differences, if any,
21 between the number of civilian casualties reported
22 pursuant to paragraph (5)(A) during the reporting
23 period and the number of civilian casualties reported
24 pursuant to paragraph (5)(B) during the reporting
25 period.

1 (7) A description of the mechanisms used to
2 prevent and limit civilian casualties in connection
3 with the use of force pursuant to this joint resolu-
4 tion during the reporting period.

5 (8) A current description of the process by
6 which the United States investigates allegations of
7 civilian casualties resulting from United States mili-
8 tary operations.

9 (9) A description of the current national secu-
10 rity, diplomatic, development, and humanitarian
11 goals of the United States for each country listed
12 under paragraph (3) in order to create the condi-
13 tions for the end of use of United States military
14 force in such country, and the strategy and expected
15 timeline to execute such goals.

16 (10) An assessment, as of the date of submittal
17 and publication, of the bilateral and multilateral im-
18 pact of United States use of force pursuant to this
19 joint resolution in each country listed under para-
20 graph (3), and an assessment of the engagement of
21 the government of such country with United States
22 use of force in such country.

23 (11) A comprehensive and current description,
24 both for the reporting period and in aggregate as of
25 the date of submittal and publication, of the

1 amounts expended by the United States for and in
2 support of military operations and activities in con-
3 nection with use of force pursuant to this joint reso-
4 lution.

5 (b) FORM.—

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

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

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

18 (c) BRIEFINGS.—The Department of Defense shall
19 provide a briefing to any appropriate congressional com-
20 mittee or leadership upon request of such committee or
21 leadership not less often than every six months on activi-
22 ties undertaken pursuant to this joint resolution.

1 **SEC. 8. EXPEDITED PROCEDURES FOR CONSIDERATION OF**
2 **JOINT RESOLUTIONS.**

3 (a) IN GENERAL.—A resolution specified in sub-
4 section (b) shall be eligible for consideration using expe-
5 dited procedures specified in this section.

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

8 (1) A joint resolution covered by section 4.

9 (2) A joint resolution to extend, whether with
10 or without modification, this joint resolution, as pro-
11 vided for in section 6.

12 (c) REFERRAL.—A resolution described in subsection
13 (b) introduced in the Senate shall be referred to the Com-
14 mittee on Foreign Relations of the Senate. A resolution
15 described in subsection (b) that is introduced in the House
16 of Representatives shall be referred to the Committee on
17 Foreign Affairs of the House of Representatives.

18 (d) DISCHARGE.—If the committee to which a resolu-
19 tion described in subsection (b) is referred has not re-
20 ported such resolution (or an identical resolution) by the
21 end of the 20-day period beginning on the date of intro-
22 duction, such committee shall be, at the end of such pe-
23 riod, discharged from further consideration of such resolu-
24 tion, and such resolution shall be placed on the appro-
25 priate calendar of the House involved.

26 (e) CONSIDERATION.—

1 (1) IN GENERAL.—On or after the third day
2 after the date on which the committee to which such
3 a resolution is referred has reported, or has been
4 discharged (under subsection (d)) from further con-
5 sideration of, such a resolution, it is in order (even
6 though a previous motion to the same effect has
7 been disagreed to) for any Member of the respective
8 House to move to proceed to the consideration of the
9 resolution. A Member may make the motion only on
10 the day after the calendar day on which the Member
11 announces to the House concerned the Member's in-
12 tention to make the motion, except that, in the case
13 of the House of Representatives, the motion may be
14 made without such prior announcement if the mo-
15 tion is made by direction of the committee to which
16 the resolution was referred. All points of order
17 against the resolution (and against consideration of
18 the resolution) are waived. The motion is highly
19 privileged in the House of Representatives and is
20 privileged in the Senate and is not debatable. The
21 motion is not subject to amendment, or to a motion
22 to postpone, or to a motion to proceed to the consid-
23 eration of other business. A motion to reconsider the
24 vote by which the motion is agreed to or disagreed
25 to shall not be in order. If a motion to proceed to

1 the consideration of the resolution is agreed to, the
2 respective House shall immediately proceed to con-
3 sideration of the joint resolution without intervening
4 motion, order, or other business, and the resolution
5 shall remain the unfinished business of the respec-
6 tive House until disposed of.

7 (2) DEBATE.—Debate on the resolution, and on
8 all debatable motions and appeals in connection
9 therewith, shall be limited to not more than 30
10 hours, which shall be divided equally between those
11 favoring and those opposing the resolution. An
12 amendment to the resolution is not in order. A mo-
13 tion further to limit debate is in order and not de-
14 batable. A motion to postpone, or a motion to pro-
15 ceed to the consideration of other business, or a mo-
16 tion to recommit the resolution is not in order. A
17 motion to reconsider the vote by which the resolution
18 is agreed to or disagreed to is not in order.

19 (3) VOTE ON FINAL PASSAGE.—Immediately
20 following the conclusion of the debate on the resolu-
21 tion and a single quorum call at the conclusion of
22 the debate if requested in accordance with the rules
23 of the appropriate House, the vote on final passage
24 of the resolution shall occur.

1 (4) APPEALS FROM DECISIONS OF CHAIR.—Ap-
2 peals from the decisions of the Chair relating to the
3 application of the rules of the Senate or the House
4 of Representatives, as the case may be, to the proce-
5 dure relating to a resolution shall be decided without
6 debate.

7 (f) CONSIDERATION BY OTHER HOUSE.—

8 (1) IN GENERAL.—If, before the passage by one
9 House of a resolution of that House described in
10 subsection (b), that House receives from the other
11 House a resolution described in subsection (b), then
12 the following procedures shall apply:

13 (A) The resolution of the other House shall
14 not be referred to a committee and may not be
15 considered in the House receiving it except in
16 the case of final passage as provided in sub-
17 paragraph (B)(ii).

18 (B) With respect to a resolution described
19 in subsection (b) of the House receiving the res-
20 olution—

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

24 (ii) the vote on final passage shall be
25 on the resolution of the other House.

1 (2) FOLLOWING DISPOSITION.—Upon disposi-
2 tion of the resolution received from the other House,
3 it shall no longer be in order to consider the resolu-
4 tion that originated in the receiving House.

5 (g) RULES OF THE SENATE AND HOUSE OF REP-
6 RESENTATIVES.—This section is enacted by Congress—

7 (1) as an exercise of the rulemaking power of
8 the Senate and the House of Representatives, re-
9 spectively, and as such it is deemed a part of the
10 rules of each House, respectively, but applicable only
11 with respect to the procedure to be followed in that
12 House in the case of a resolution described in sub-
13 section (b), and it supersedes other rules only to the
14 extent that it is inconsistent with such rules; and

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

20 **SEC. 9. REPEAL OF AUTHORIZATION FOR USE OF MILITARY**
21 **FORCE.**

22 The Authorization for Use of Military Force (Public
23 Law 107–40; 115 Stat. 224; 50 U.S.C. 1541 note) is here-
24 by repealed, effective six months after the date of the en-
25 actment of this joint resolution.

1 **SEC. 10. REPEAL OF AUTHORIZATION FOR USE OF MILI-**
2 **TARY FORCE AGAINST IRAQ RESOLUTION OF**
3 **2002.**

4 The Authorization for Use of Military Force Against
5 Iraq Resolution of 2002 (Public Law 107–243; 116 Stat.
6 1498; 50 U.S.C. 1541 note) is hereby repealed.

7 **SEC. 11. DEFINITIONS.**

8 In this joint resolution:

9 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
10 **TEES AND LEADERSHIP.**—The term “appropriate
11 congressional committees and leadership” means—

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

14 (B) the Committee on Armed Services, the
15 Committee on Foreign Relations, the Com-
16 mittee on Appropriations, and the Select Com-
17 mittee on Intelligence of the Senate;

18 (C) the Speaker of the House of Rep-
19 resentatives and the minority leader of the
20 House of Representatives; and

21 (D) the Committee on Armed Services, the
22 Committee on Foreign Affairs, the Committee
23 on Appropriations, and the Permanent Select
24 Committee on Intelligence of the House of Rep-
25 resentatives.

1 (2) COMPELLING UNITED STATES INTER-
2 ESTS.—The term “compelling United States inter-
3 ests” means the following:

4 (A) United States territory.

5 (B) The United States Armed Forces.

6 (C) United States citizens.

7 (3) FOREIGN STATE.—The term “foreign state”
8 has the meaning given that term in section 1603(a)
9 of title 28, United States Code, namely a foreign
10 state, a political subdivision of a foreign state, or an
11 agency or instrumentality of a foreign state (as that
12 term is defined in section 1603(b) of such title).

○