

115TH CONGRESS  
2D SESSION

# 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.

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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

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## **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).

○