

DIRECTING THE REMOVAL OF UNITED STATES ARMED FORCES FROM
HOSTILITIES IN THE REPUBLIC OF YEMEN THAT HAVE NOT BEEN AU-
THORIZED BY CONGRESS

FEBRUARY 8, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. ENGEL, from the Committee on Foreign Affairs,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 37]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the
joint resolution (H.J. Res. 37) directing the removal of United
States Armed Forces from hostilities in the Republic of Yemen that
have not been authorized by Congress, having considered the same,
report favorably thereon without amendment and recommend that
the joint resolution do pass.

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PURPOSE AND SUMMARY

H.J. Res. 37 directs the removal of United States armed forces from hostilities in the Republic of Yemen that have not been authorized by Congress.

BACKGROUND AND NEED FOR LEGISLATION

The United States has longstanding strategic interests in promoting security and stability in the Arabian Peninsula and has worked with partners there for decades to help them defend their borders and encourage burden sharing.

In 2014, after years of violence and insurgency, Ansar Allah/Houthi rebels seized the Yemeni capital city of Sana'a, deposing the legitimate, internationally recognized Government of Yemen and further destabilizing Yemen and the region. In 2015, Houthi forces advanced from the capital to Aden. In March 2015, Yemeni President Hadi, who had fled to Saudi Arabia, appealed for international intervention. Saudi Arabia established a coalition of nations to engage in military operations in Yemen against the Ansar Allah/Houthi movement. Since March 2015, at the behest of President Hadi, a Saudi-led coalition intervention in Yemen has used airstrikes and partnered with local Yemeni forces to reclaim territory from the Houthis. Iran has trained and equipped Houthi fighters with weapons, reportedly including ballistic missiles and armed drones. These have been used against Saudi civilians and a U.S. navy ship and personnel.

The war has exacerbated a humanitarian crisis in Yemen that began in 2011. According to the Director of National Intelligence, "The humanitarian impacts of the conflict in Yemen—including, famine, disease, and internal displacement—will be acute in 2019 and could easily worsen if the coalition cuts key supply lines to Sana'a. The fighting has left more than 22 million people, or approximately 75 percent of the population, in need of assistance, with millions of people at severe risk of famine by the UN definition—numbers that are likely to rise quickly if disruptions to aid access continue." According to Mr. David Harden, the former Assistant Administrator of USAID, "Last year Yemen faced the world's largest cholera epidemic in recorded history; one million people suffered from an outbreak driven by the deterioration of the wastewater management systems primarily in Houthi-controlled territory." Food commodities are too expensive for the average Yemeni. As a result, people cannot afford to feed their families. Limited access to certain areas of Yemen has made it difficult for governments and aid agencies to count the war's casualties. Experts estimate that 16,000 Yemenis have been killed by airstrikes and many more from malnutrition and disease.

Though fighting continues along several fronts, on December 13, 2018, the Special Envoy of the United Nations Secretary-General for Yemen, Martin Griffiths, brokered a cease-fire centered on the besieged Red Sea port city of Hodeidah, Yemen's largest port. As part of the deal, known as the Stockholm Agreement, the coalition and the Houthis agreed to redeploy their forces outside Hodeidah city and port. As of the date of this report, the agreement was fragile, but holding.

Since 2015, the United States has provided military support to the Saudi-led coalition in the war against the Ansar Allah/Houthi movement. This support includes intelligence sharing and support, logistics, military advice, and, until recently, aerial refueling of Saudi-led coalition aircraft on combat missions against the Ansar Allah/Houthi movement. The United States and Saudi Arabia announced on November 9, 2018 that American armed forces would suspend this refueling. However, the Administration maintains that the President has the legal authority to resume refueling coalition aircraft on combat missions at any time, despite having no specific statutory authority for American participation in this war.

In recent years, the House of Representatives has considered various measures to address the situation in Yemen. On November 13, 2017, the House passed H. Res. 599, a bipartisan resolution expressing the urgent need for a political solution in Yemen and calling on all parties to the conflict to increase efforts to prevent civilian casualties and to broaden humanitarian access.

In August 2018, Congress passed the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Section 1290 of this law created new conditions on funding for refueling of non-United States aircraft for certain missions in Yemen. Under this requirement refueling is only permitted if the Secretary of State certifies that the Government of Saudi Arabia and the Government of the United Arab Emirates are undertaking an urgent and good faith effort to support diplomatic efforts to end the civil war in Yemen, taking appropriate measures to alleviate the humanitarian crisis in Yemen, and taking demonstrable actions to reduce the risk of harm to civilians and civilian infrastructure resulting from military operations.

In September 2018, the Secretary of State certified that these conditions had been met despite significant evidence to the contrary. For example, in the period of time before the certification was due, attacks against civilians rose sharply, according to the Office of the UN High Commissioner for Human Rights. In a statement expressing opposition to a recent attack on a school bus that killed 40 civilians, the Office stated that, “These latest deaths come amid a recent spike in civilian casualties over the last week that tragically demonstrates how the conflict continues to blight the lives of Yemenis.” The certification reporting period also coincided with escalation of violence in and around the Port of Hodeidah, as coalition and Yemeni forces sought to overtake Houthi positions in that area. According to the International Committee of the Red Cross, August was the most violent month in 2018 in Yemen with nearly 500 people killed in just nine days. Since 2015, the coalition has undertaken 18,000 airstrikes. One third of those have hit non-military targets. The Secretary of State’s suspect certification flies in the face of congressional intent and is the latest action in a growing trend of the executive branch ignoring congressional prerogatives on American military activity.

Across multiple administrations, the executive branch has asserted increasingly broad authority to use military force without congressional authorization. The executive branch has limited its definition of hostilities to situations in which units of American armed forces are actively engaged in exchanges of fire with opposing units of hostile forces. The legislative branch is not bound by,

and should not accept, this exceedingly narrow definition. War powers are within Congress' constitutional authority. Congress must examine how the President is using the United States military, especially when the President is using America's armed forces to intervene in a foreign war. This view was echoed by witnesses at a recent Foreign Affairs Committee Hearing at which Mr. Jake Sullivan, a former senior State Department and White House Official, said, "Congress has an important, bipartisan role to play in the participation of the U.S. in military activities across the Middle East and across the world. That is relevant to a series of questions that have not been visited by the Congress since the passage of the 2001 and 2002 Authorizations for Use of Military Force. It would be a big step forward in terms of the assertion of this body that is going to be a fundamental part of the conversation about the balance of U.S. interests in the region and where military force is appropriate and where it is not."

The Senate has already considered this issue and reached the same conclusions as the House Foreign Affairs Committee. On December 13, 2018, a bipartisan majority in the Senate passed S.J. Res. 54, which included the same operative text and definition of hostilities as H.J. Res. 37. These resolutions define hostilities to include "in-flight refueling of non-United States aircraft conducting missions as part of the ongoing civil war in Yemen." This definition would not bind other refueling operations, but it would make clear that the President does not have the legal authority to resume in-flight refueling of non-United States aircraft in the ongoing civil war in Yemen without specific statutory authorization. The Administration expressed opposition to this definition with respect to S.J. Res. 54. It is not surprising that the executive branch would prefer a definition that affords greater unilateral power to the President. However, Article I of the Constitution assigns war powers to the legislative branch, and that is exactly why Congress must make clear its views on the laws and policies that affect United States participation in the Yemeni civil war.

HEARINGS

February 6, 2019 Full Committee hearing on "U.S. Policy in the Arabian Peninsula" (Witnesses: Mr. David Harden, Managing Director, Georgetown Strategy Group; Dr. Mara Karlin, Director of Strategic Studies, Johns Hopkins University; Jake Sullivan, Non-resident Senior Fellow, Carnegie Endowment for International Peace; Michael Singh, Senior Fellow and Managing Director, Washington Institute for Near East Policy)

COMMITTEE CONSIDERATION

On February 6, 2019, the committee marked up H.J. Res. 37 pursuant to notice, in open session. The committee agreed to report H.J. Res. 37 to the House, with the recommendation that the bill do pass by a record vote of 25 ayes and 17 noes.

On the vote to report H.J. Res. 37, with the recommendation that the bill do pass:

Voting aye: Engel, Sherman, Sires, Connolly, Deutch, Bass, Keating, Cicilline, Bera, Castro, Titus, Espaillat, Lieu, Wild, Phillips, Omar, Allred, Levin, Spanberger, Houlahan, Malinowski, Trone, Costa, Vargas, and González.

Voting no: McCaul, Smith, Wilson, Perry, Yoho, Kinzinger, Zeldin, Wagner, Mast, Fitzpatrick, Curtis, Wright, Reschenthaler, Burchett, Pence, Watkins, and Guest.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of Rules of the House of Representatives, the committee reports that findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report, particularly in the “Background” section.

NEW BUDGET AUTHORITY, TAX EXPENDITURES, AND FEDERAL MANDATES

In compliance with clause 3(c)(2) of House rule XIII and the Unfunded Mandates Reform Act (P.L. 104–4), the committee adopts as its own the estimate of new budget authority, entitlement authority, tax expenditure or revenues, and Federal mandates contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 8, 2019.

Hon. ELIOT ENGEL,
*Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 37, a Joint Resolution directing the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.J. RES. 37, A JOINT RESOLUTION DIRECTING THE REMOVAL OF UNITED STATES ARMED FORCES FROM HOSTILITIES IN THE REPUBLIC OF YEMEN THAT HAVE NOT BEEN AUTHORIZED BY CONGRESS

(As ordered reported by the House Committee on Foreign Affairs on February 6, 2019—Millions of Dollars)

	Direct Spending	Revenues	Net Deficit Effect	Spending Subject to Appropriation
2019	0	0	0	*
2019–2024	0	0	0	*
2019–2029	0	0	0	n.a.

Pay-as-you-go procedures apply? No

Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030? No

*= between \$0 and \$500,000; n.a. = not applicable.

Mandate Effects

Contains intergovernmental mandate? No

Contains private-sector mandate? No

H.J. Res. 37 would direct the President to remove U.S. armed forces from hostilities in or affecting Yemen, except for those engaged in operations against al-Qaeda or associated forces. It also would require the Administration to provide two reports to the Congress. One report would detail the risks to U.S. citizens and Saudi civilians and the danger of regional humanitarian crises if the United States stopped supporting the Saudi-led coalition fighting in Yemen. The other report would assess the increase in the risk of terrorist attacks if the Kingdom of Saudi Arabia stopped sharing Yemen-related intelligence with the United States.

In a letter to Senator McConnell in February 2018, the Department of Defense (DoD) stated that U.S. support for the Saudi-led coalition fighting in Yemen does not constitute hostilities. It further stated that U.S. armed forces are engaged in hostilities against terrorist organizations operating in Yemen, including al-Qaeda and the Islamic State of Iraq and Syria. To the extent U.S. armed forces are currently engaged in hostilities against terrorist organizations other than al-Qaeda or its associates, those operations would be precluded under the resolution. However, CBO expects that the number of DoD personnel and the amount of resources in the region would be unaffected.

CBO estimates that implementing the reporting requirements under H.J. Res. 37 would cost less than \$500,000 over the 2019–2024 period; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Sunita D'Monte. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

NON-DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, the committee states that no provision of this resolution establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The objective of H.J. Res. 37 is to direct the President to remove U.S. Armed Forces from hostilities affecting Yemen that have not been authorized by Congress. It directs the President to remove forces within 30 days, unless Congress authorizes a later withdrawal date or specifically authorizes the use of the Armed Forces.

For purposes of this resolution, the term “hostilities” includes in-flight refueling of non-United States aircraft conducting missions as part of the civil war in Yemen. It also requires the President to report to Congress on the risks that would be posed if the United States were to cease supporting counter-Houthi operations in Yemen, and if Saudi Arabia were to cease sharing Yemen-related intelligence with the United States.

CONGRESSIONAL ACCOUNTABILITY ACT

H.J. Res. 37 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

NEW ADVISORY COMMITTEES

H.J. Res. 37 does not establish or authorize any new advisory committees.

EARMARK IDENTIFICATION

H.J. Res. 37 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of House rule XXI.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings. This section establishes that, under Article I of the Constitution, Congress has the sole authority to declare war; highlights the duration and extent of U.S. support for the Saudi-led coalition's military campaign against Houthi rebels in Yemen; reaffirms the definition of hostilities in the War Powers Resolution and applies it to the U.S. role in the Saudi-led coalition's campaign; and emphasizes that there is no statutory authorization for the use of force in the conflict between the Saudi-led coalition and Houthis and no provision of law explicitly authorizing targeting assistance or midair refueling of Saudi or UAE warplanes in such conflict.

Section 2. Removal of United States Armed Forces from Hostilities in the Republic of Yemen That Have Not Been Authorized by Congress. This section directs the President to remove U.S. Armed Forces from hostilities affecting Yemen, except those engaged in operations directed at al-Qaeda or its associated forces. It directs the President to remove forces within 30 days, unless Congress authorizes a later withdrawal date or specifically authorizes the forces. For purposes of this resolution, the term "hostilities" includes in-flight refueling of non-United States aircraft conducting missions as part of the civil war in Yemen.

Section 3. Rule of Construction Regarding Continued Military Operations and Cooperation with Israel. This section specifies that nothing in the resolution may be construed to influence or disrupt any military operations and cooperation with Israel.

Section 4. Report on Risks Posed by Ceasing Saudi Arabia Support Operations. This section requires the President to report to Congress on the risks that would be posed if the United States were to cease supporting counter-Houthi operations in Yemen.

Section 5. Report on Increased Risk of Terrorist Attacks to United States Armed Forces Abroad, Allies, and the Continental United States if Saudi Arabia Ceases Yemen-Related Intelligence Sharing with the United States. This section requires the President to report to Congress on the risks that would be posed if Saudi Arabia were to cease sharing Yemen-related intelligence with the United States.

DISSENTING VIEWS

As Ranking Member of the Committee on Foreign Affairs, I am disappointed that the first committee business of the 116th Congress is such a marked departure from our typical bipartisan cooperation on productive legislation. House Joint Resolution 37 misuses a privileged statutory mechanism that applies only when U.S. troops are directly engaged in hostilities, in order to create the appearance of action. However it provides no clear decisions on which forms of assistance to Gulf states are implicated, and no guidance on how best to mitigate the humanitarian catastrophe inside Yemen. Alarming, it also completely ignores the destabilizing role that Iran is playing, both in the Yemen conflict and in the region. This is an irresponsible approach to United States foreign policy.

As Republican Members stated during our markup, it is problematic that the Committee is rushing to pass a measure affecting complex and vital security and humanitarian interests before Members—especially the 12 brand new Committee Members—have had the opportunity to be fully briefed in a classified setting on the situation in Yemen, and on the actual nature, extent, and purpose of U.S. engagement on the Arabian Peninsula.

The Committee has no more solemn responsibility than its exercise of Congressional war powers under Article I of the Constitution. The privileged statutory mechanism to force withdrawal of U.S. forces under the War Powers Resolution (pursuant to sections 1546 and 1546a of Title 50 of the U.S. Code) applies only when U.S. troops are engaged in unauthorized live-fire hostilities. As the Department of Defense has repeatedly confirmed, as recently as this week, U.S. Armed Forces are not engaged in hostilities against Houthi forces in Yemen. Even the aerial refueling of coalition jets—which does not constitute hostilities as traditionally understood—ended last November.

This resolution is trying to hammer a square peg into a round hole. It misuses an extraordinary War Powers tool to try to get at the issue of security cooperation to third countries. It would set a dangerous precedent. It stretches the definition of “hostilities” to cover non-U.S. military operations by other countries. It reinterprets U.S. support to those countries as “engage[ment] in hostilities.” This has implications far beyond Saudi Arabia.

This approach will allow any single Member to use a privileged mechanism to second-guess security cooperation relationships that the United States maintains with more than 100 countries throughout the world. Under this model, if any Member of Congress doesn’t like something that any of our security partners does overseas, that Member can force quick consideration of a resolution directing the removal of U.S. forces from hostilities “in or affecting” that situation. It no longer matters that U.S. forces are not actually conducting those hostilities. This interpretation could impact our

assistance to Israel. It could affect our cooperation with NATO allies. It could impact our counterterrorism cooperation with African nations in the Sahel. We could recklessly undo critical security relationships we have spent decades building.

This is not what the War Powers Resolution has ever meant, and it should not be misused this way now.

No one is saying that U.S. security assistance—to Saudi Arabia or anyone else—is beyond Congressional scrutiny. Congress has many tools at its disposal, including this Committee’s arms sales notifications, targeted legislation, and the annual appropriations process, among others.

But House Joint Resolution 37 is not a serious piece of targeted legislation. It is a vague and irresponsible political stunt that will create new doubts for our partners and allies around the world. It will trouble the many Americans who believe that burden-sharing with capable allies is vital for U.S. national security.

For these reasons, I strongly oppose this measure.

MICHAEL T. MCCAUL,
Ranking Member.

