



Unravelling the New World Order

*An Exposé of How Government, Religious, and Financial Insiders
Are Deciding Your Future*

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Has the President Exceeded His Authority in Libya?

By the Editors

Recent U.S. airstrikes against Libya have ignited debate over whether the president can launch military operations without first securing congressional approval. Because of the confusion about this, it is helpful to know what the Constitution says, and to learn what has transpired in our nation's history with regard to this issue.

Formal Declarations of War

The Constitution explicitly requires a formal declaration of war from Congress if it becomes necessary to take our nation to war. There are two reasons: (1) It prevents the president from taking the country to war without the consent of the American people (as represented by Congress), and (2) it provides for a specific pathway to war, giving the president power and legitimacy he would not otherwise have had.

Thus, a president is both restrained and empowered by a declaration. It makes his position as commander in chief unassailable by authorizing military action, and it creates shared responsibility for war. Further, a declaration of war informs the public of the burdens they will have to bear by leaving no doubt that Congress has authorized the war.

World War II was the last war the United States fought with a formal declaration of war. The wars fought since have had congressional approval in the sense that resolutions were passed and Congress appropriated funds. Depending on the purpose and likely duration of hostilities—as with regime change in Iraq, for example—a president must seek congressional approval, either in the form of a declaration of war or the less formal use-of-force authorization.

It seems logical that presidents, needing authorization for going to war, would ask Congress for a declaration of war. Failing to do so has led, in large part, to failed presidencies. Harry Truman, embroiled in a “police action” that grew into an unpopular war in Korea, was unable to seek another term. Lyndon Johnson, in a war in Vietnam that began with military “advisers” and grew out of control was also unable to seek a new term. George W. Bush, at war in Afghanistan and Iraq, completed his terms; but by the end of his tenure, his approval ratings had sunk to the lowest point of his presidency. Had Bush requested a declaration of war on al Qaeda on September 12, 2001, it likely would have been granted, and the president would have had greater freedom to carry out operations as he saw fit.

Why Did Congress Abandon the Declaration of War?

Let's start with the first major undeclared war in American history—Korea. When North Korea invaded South Korea, President Truman took the matter to the new U.N. Security Council because he wanted international sanction for the war. He believed that UN sanction for the war superseded the requirement for a declaration of war in two ways: (1) It was not a war in the conventional sense, he argued, but a “police action” under the UN Charter; and (2) The UN Charter constituted a treaty, thereby implicitly binding the United States to go to war if the United Nations so ordered.

Truman set the precedent that wars could be waged without congressional declarations of war. At that point, the strongest argument made for the irrelevancy of the declaration of war was the increasing risk of nuclear war. In the event of a nuclear attack, time and secrecy made a prior declaration of war by Congress impossible. In a first strike scenario, there would be only minutes for the president to authorize counterstrikes. The argument that the Constitution had become irrelevant, insofar as military realities in the nuclear age were concerned, was persuasive.

Fear of nuclear war resulted in covert warfare becoming a “prudent alternative,” but such operations had to be deniable. Any attempt to assassinate an enemy agent or raise a secret army to face a secret army of the enemy could obviously not be validated with a declaration of war. The Cold War was a series of discrete operations, fought with secret forces whose existence could not be openly acknowledged.

Then came the need for advisers, sent to train the armies of our allies. These advisers were not to engage in combat but were there to advise those who did. As time passed, the lines were blurred. Advisers accompanied their trainees on missions, and some died. But this was not war in the conventional sense, and thus the declaration of war was “non-applicable.”

When Vietnam turned volatile, Lyndon Johnson—rather than asking Congress for a declaration—used an incident in the Tonkin Gulf that he interpreted as being the equivalent of war in order to get a congressional resolution. He knew the public might not be prepared to go to war, and thus for him, it was a political decision to wage war without asking for a declaration.

Johnson’s decision set the stage for what came afterward: war by congressional resolution. At that point, the declaration of war as a constitutional imperative collapsed—as did Lyndon Johnson’s presidency.

The War Powers Act

Recognizing that wars might commence before congressional approval could be given, Congress passed the War Powers Act of 1973—basically for the same reason that Lyndon Johnson did not seek a declaration from Congress: It is *politically safer* to authorize a war already under way than to invoke declarations of war. The War Powers Act (WPA) puts limits on the ability of the President to send American troops into combat areas without Congressional approval.

Without a declaration of war by Congress or a specific congressional mandate, the president can only send troops into battle—or into areas where “imminent” hostilities are likely—for 60 days. The President can extend the time the troops are in the combat area for 30 extra days, for a total of 90 days.

If you examine just this section you might make the case that President Obama is in compliance with the act. However, before the President can even use the authority to attack another nation under the WPA, the conditions for use of this authority, contained in section 2(c), must be satisfied: “The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”

It can be argued that President Obama has acted illegally by claiming to comply with the WPA, while ignoring the limitations of the use of that authority. It is clear that:

1. Congress has not declared war against Libya.
2. Congress has passed no statutory authority for the President to take this action.
3. A national emergency was not created by an attack upon the United States, its territories or possessions, or its armed forces.

Those statements being correct, the President does not have the authority to engage in the actions of war he has undertaken in Libya and has, quite possibly, violated the War Powers Act and committed an impeachable offense.