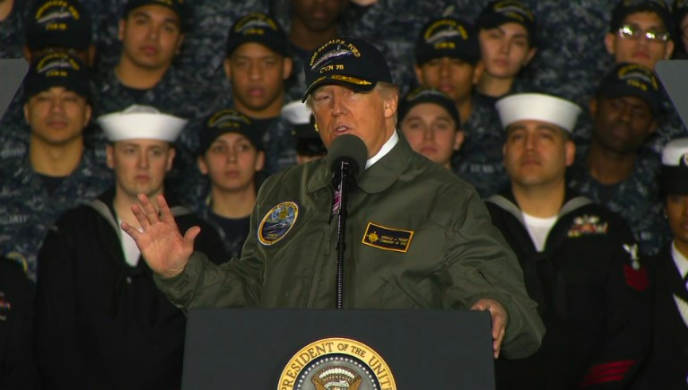
Presidential War Powers  
Informational Article by Chris Jeub



The Founding Fathers originally made a clear separation of war powers in the Constitution. They gave Congress the power to decide to commit American troops to foreign combat, and they gave the President the power to command the troops to carry out the objectives Congress voted for. Unfortunately, in the two centuries since, that balance of power is now out of balance with serious implications for our country and the troops we send into harm’s way.

This informational article gives you the background for the Public Forum debate resolution, “*Resolved: On balance, the current Authorization for Use of Military Force gives too much power to the president.”* Cases will be released later to Monument Members to prepare them for a successful month of debate competition.

# Affirming the Resolution

Several presidents of both parties are guilty of citing war without Congressional approval. A good PRO strategy will not indict any one particular President for doing so. However, given the current political environment, this resolution is written because of the fear of President Trump with nuclear launch authority, as well as the elevated conflict between Trump and the leader of North Korea. In January, President Trump Tweeted:

“North Korean Leader Kim Jong Un just stated that the “Nuclear Button is on his desk at all times.” Will someone from his depleted and food starved regime please inform him that I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works!”

PROs can join the chorus of criticism that calls such tactics un-presidential or juvenile, but I believe a better strategy would be to distance yourself from partisan arguments. Instead, look at reform of the institutional process to restore respect for what the Constitution says about our foreign military commitments.

Presidents have taken on too much power to start wars on their own initiative and then dare Congress to stop them (and sometimes ignore Congress when they try to stop them). Many commentators say Congress should just cut off the funding but it’s not that simple. In the early days of the Republic, Congress voted to allocate money to specific military missions, even naming how many soldiers would be paid for and what rations they would eat. Presidents like George Washington couldn’t use the military for anything on their own initiative unless we were attacked.

In recent generations that has changed. Today Congress allocates a general defense budget for the Army, the Navy the Air Force, for ships, planes, etc. but without specifying what missions they are to be sent to. Given modern equipment procurement costs and the inefficiencies of stopping and starting construction of aircraft carriers, for example, you can see the logic. But once the President has all of these men and equipment, already budgeted and paid for, he is then tempted to use them. Once he initiates a conflict X, it then is up to Congress to pass a new piece of legislation telling the President that no funds may be spent on military forces for X mission. However, the President may now veto that legislation, meaning that Congress must have a ⅔ majority to control funding for any war the President starts. That’s a nearly impossible hurdle, and one not intended by the Framers of the Constitution, who intended war funding to be enacted or withheld by simple majority votes in Congress. Effectively, war funding has had its constitutional function amended, without an actual constitutional amendment.

Congress tried to solve this problem in 1973 by passing the War Powers Act (also known as the War Powers Resolution). It requires that the President notify Congress about any military action, and gives him 60 days to continue the action and receive Congressional approval. If Congress does not affirmatively approve the action within 60 days, he must withdraw the troops within the next 30 days. The question then is “Or Else What?” If he doesn’t withdraw (and Presidents have tried this) what happens? The answer is, nothing. Congress could find the President in violation of the law and begin impeachment proceedings, but they have never chosen to do that over the War Powers issue. Another related issue happens when Congress votes to authorize military action, and then the action grows beyond the scope and time intended by Congress in the beginning. The President takes a small incident and creates a huge war. This arguably is what happened with Vietnam and Afghanistan.

PROs should focus on the latter problem described above. Legal scholars say the solution is to change the “rules of the house” for both the House and Senate. The Constitution gives both houses of Congress the right to set their own rules (without veto by the President). Each house will pass a rule declaring that all future war authorizations have a default 2-year expiration date, and that future military war funding appropriations expire at the same time as the war authorization (unless Congress provides otherwise in the text of the legislation). The President will now be forced to come back to Congress to explain the war and justify the ongoing US military commitment of lives and money, or else, by default, his war will be defunded. The burden shifts to the President to prove the need for the war, rather than a ⅔ majority of Congress to prove we “don’t” need it.

# Negating the Resolution

I suppose the Negative could fuel the Trump hate and consider how frightening it is to have a Commander in Chief with a nuclear button at his side. Hillary Clinton took part in the Twitter war just the same:

"The thought of Donald Trump with nuclear weapons scares me to death. It should scare everyone." —Hillary Clinton Tweet

Just the same, CONs can keep nonpartisan and simply argue that the President’s hands should not be tied. Presidents throughout history have engaged in wars without Congress being called every time — in over 100 incidents, in fact — so what’s the big deal? Congress is normally too paralyzed politically to deal with issues of war. They really just want the President to handle it.

If it succeeds, Congress will claim success since they funded it. If it fails, they will blame the President for getting us into a war they didn’t authorize. If anyone will politicize war, it will be Congress.

Congress is a body that cannot be trusted to properly manage a war, and they will mess it up if we give them the chance. In addition, setting dates in advance for troop withdrawals sends signals to our enemies that they can run out the clock and beat us on the battlefield if they know a vote is coming up.

# Inherency Cards

INHERENCY: The balance of power between Congress and the President.

Realize A. WPA fails. The War Powers Act fails, and Presidents start wars without Congress

Dr. Steve Frank 2011. (Ph.D. in American history from the Univ of Michigan, National Constitution Center’s Vice President of Education & Exhibits) The Fog of the War Powers Act: Why We Should Embrace the Constitution’s Ambiguity, <https://constitutioncenter.org/blog/the-fog-of-the-war-powers-act-why-we-should-embrace-the-constitutions-ambig>

In the aftermath of the Vietnam War, the country and Congress engaged in a loud debate about the issue, which led to the War Powers Act of 1973. The measure was designed to give Congress more say about whether to commit troops to the battlefield, but it’s generally considered a failure. No president, Democrat or Republican, has accepted its constitutionality, and Congress hasn’t tried to enforce it. Numerous U.S. military actions since – including Grenada in 1983, Panama in 1989, Bosnia in 1995, and now Libya and Yemen – have been conducted without express congressional approval.

Realize B. Constitutional balance upset.

Dr. James M. Lindsay 2011. (PhD from Yale; senior vice president, director of studies, and Maurice R. Greenberg chair at the Council on Foreign Relations; former director of the Robert S. Strauss Center for International Security and Law at Univ of Texas at Austin) 5 Apr 2011 Is Operation Odyssey Dawn Constitutional? Part V (ellipses in original) <http://blogs.cfr.org/lindsay/2011/04/05/is-operation-odyssey-dawn-constitutional-part-v/>

The effect of the Court’s reticence in recent years, however, is to turn the constitutional structure the Framers created on its head. At least it does if you agree with Alexander Hamilton that “the Legislature have a right to make war” and that “it is…the duty of the Executive to preserve Peace till war is declared.” How so? The Framers put the burden of effort in going to war on presidents. Presidents could not act *until* they had persuaded Congress to agree. That meant assembling winning coalitions in both the House and Senate. As I noted in an earlier post, some nineteenth century presidents tried and failed to secure congressional approval for hostilities they hoped to initiate. By contrast, if presidents are free to act *unless* Congress stops them—as the judge suggested in *Dellums v. Bush—*then the burden of effort shifts to the other end of Pennsylvania Avenue. Congress can stop the president only by passing a law that commands him to do so. But that law is subject to a presidential veto. As long as a president can get thirty-four senators to back him, and almost every president can, he carries the day even if the other 501 members of Congress are opposed. Facing those daunting odds, most members of Congress don’t see the point in challenging the White House. Why waste valuable legislative energy tilting at windmills? Moreover, political incentives reinforce the urge that lawmakers have to head to the sidelines. After all, laying oneself open to charges of refusing to support U.S. troops in the field is hardly a recipe for electoral success. So the war power gravitates to the White House, in practice if not in law.