

Balance of U.S. War Powers

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There have long been disputes over the role of Congress and the president in waging military action.

Introduction

The U.S. Constitution gives Congress and the president different responsibilities over military action, but there have long been disputes about where one's war powers begin and the other's ends. The Obama administration's decision in August 2013 to seek congressional authorization for a military strike against Syria over its alleged use of chemical weapons has stirred new debate about the constitutional need for a president to request such approval and whether President Obama is creating a precedent that will hamstring future commanders in chief.

In the administration's previous major military intervention, participating in NATO air strikes against the Libyan regime in 2011, it [stated that prior congressional approval \(pdf\)](#) was not required because the limited military operations anticipated "were not a 'war' for constitutional purposes." At the time, many scholars had pointed to Obama's action as consistent with the greater assertion of presidential war powers since the end of World War II. Announcing his plans on Syria, Obama said he had the authority to take military action without specific congressional authorization. But the formal approval of Congress, he said, would provide [a stronger basis for action](#) and was "the right thing to do for our democracy."

What are the president's war powers?

The U.S. Constitution empowers the president to wage wars as commander in chief while Congress has the power to declare wars--in fact to authorize hostilities at any level--and fund them. Legal scholars largely agree that presidents can order U.S. troops to fight when the country is attacked or attack appears imminent but chief executives from both major parties often differ with Congress over their ability to initiate military force in other combat situations. Presidents have demonstrated greater power to wage wars since the end of World War II. "The president has been commander in chief since 1789, but this notion that they can go to war whenever they want, and [ignore] Congress, that's a post-World War II attitude," says Louis Fisher, scholar in residence at the Constitution Project (and former specialist in constitutional law at the Library of Congress).

Legal experts Noah Feldman and Samuel Issacharoff wrote in March 2007 in *Slate* that while the Constitution empowered the Congress to make and end war, it intended the president to have the power to wage war effectively, once an authorized war was begun. "In the modern era, no country--not even a parliamentary democracy--has been so foolhardy as to place a war under the [guidance of a legislative body](#), rather than a single, unified command."

But other experts point to established limits of presidential power during wartime, citing the U.S. Supreme Court's 1952 ruling [that struck down](#) President Harry S. Truman's order to maintain operations of the country's steel mills for national security reasons, which was found to be against the will of Congress. Some point to the Supreme Court's 2006 [Hamdan vs. Rumsfeld](#) ruling--which found special military commissions established by the Bush administration to be illegal--to stress the shared wartime powers of the president and Congress. [Susan Low Bloch](#), a constitutional law expert at the Georgetown University Law Center, says the framers of the Constitution deliberately divided the war powers between the two branches to induce them to work together on such a vital issue.

Will the authorization process over Syria affect those powers?

The president's decision to seek explicit authority for what has been described as a limited action could have lasting repercussions. In the view of some experts, the move could inhibit Obama for the rest of his term in his ability to initiate military action without congressional authority, or at a minimum it would heighten public expectations about the need for future presidents to seek congressional support. But a number of experts also say the Syria action warranted a request for congressional authorization. The planned use of military force in Syria without authorization would have amounted to [a major constitutional stretch](#), writes Jack Goldsmith, a former U.S. assistant attorney general and current professor at Harvard Law School. Goldsmith wrote on the Lawfare blog that the envisioned action in Syria would have set a precedent for presidential unilateralism in part because "neither U.S. persons nor property are at stake, and no plausible self-defense rationale exists."

Can Congress set timelines for a troop withdrawal?

The constitution gives the Congress power to set troop limits. A late twentieth-century example was the action by the Democrat-controlled Congress in the fall of 1983 setting up an eighteen-month time limit for U.S. troops already deployed as a peacekeeping force in Lebanon by President Ronald Reagan's Republican administration. But the eighteen-month limit was never tested. Within two weeks of the president signing that timeline measure into law, a suicide bomb destroyed the U.S. Marine barracks in Beirut, killing 241 U.S. service personnel. The Reagan administration withdrew its participation in the multinational force in Lebanon by the end of March 1984.

What is the War Powers Resolution?

The 1973 [War Powers Resolution](#) followed a period of growing congressional concern over the unilateral presidential use of military force. Among other things, the legislation, which was passed over a veto by President Nixon, required that a president terminate combat in a foreign territory within sixty to ninety days unless there was congressional authorization to continue. It also sought to provide presidents with the leeway to respond to attacks or other emergencies. The measure was intended to provide more coordination between the executive and legislative branches on the use of force. It does not fully address the issue of winding down a conflict.

What impact has the War Powers Resolution had on waging wars?

Experts say it has had mixed results. Alton Frye, a CFR presidential senior fellow at the time, told the [Senate Judiciary Committee in 2002](#) that the response to the act was disappointing. "The resistance of every president to the law," he said, "beginning with President Nixon's unsuccessful veto, and the Supreme Court's refusal to provide a definitive ruling on the law's constitutionality, have left a worrisome cloud over legislative-executive relations in this crucial field."

The Congressional Research Service says that from 1975 through 2011, presidents submitted 132 reports [related to deployment of U.S. forces \(PDF\)](#), as required by the resolution. But only one--the 1975 Mayaguez incident--cited action triggering the time limit. It found the reports from presidents, who usually said their actions were "consistent with the War Powers Resolution," ranged from embassy operations to full combat like the 2003 war with Iraq, which Congress authorized. Fisher, of the Constitution Project, says there has been some acknowledgment from presidents of the law's power. "I think in a lot of actions--in Granada [in 1983], in Panama in 1989--there seemed to be efforts to get things wrapped up by the sixty-day limit," he says.

What are the president's options if Congress cuts off funding?

Despite Congress' power of the purse, a number of experts cite the factors favoring the executive branch during wartime. CFR's James Lindsay, writing during the 2011 debates over Libyan intervention, noted the tough calculus involved in Congress challenging a president's ability to act militarily, in his blog, [The](#)

Water's Edge: "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."