



Written by [Charles Scaliger](#) on June 5, 2017

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Should One Man Decide When to Take the Nation to War?

With a barrage of 59 Tomahawk cruise missiles targeting a Syrian air base, President Donald Trump has now joined the long list of modern presidents willing to commit acts of war without consulting Congress. Like many of his recent predecessors, President Trump cited authority granted him by the War Powers Resolution of 1973 (also known as the War Powers Act), which allows the president to send U.S. military forces into combat, provided he notifies Congress within 48 hours of the action and withdraws troops from combat after 60 days unless Congress approves an extension. This act was allegedly intended to curtail the president's power to commit the U.S. military to war without congressional authorization following unrestrained presidential military action in Korea and Vietnam without congressional authorization.



But since the passage of the War Powers Act, U.S. presidents have been more, not less, inclined to commit the nation to war without congressional approval. Such has been the case in the various Balkan conflicts in the 1990s, numerous military actions in the Middle East since the Persian Gulf War, two invasions of Haiti, the 1980s attacks on Libya and invasions of Grenada and Panama, and countless other smaller incidents. For larger wars, such as the Persian Gulf War and the Iraq War, presidents have taken to citing international authority such as UN Security Council resolutions as their ultimate justification for waging war; in this, they essentially adopted the reasoning of President Harry Truman, the first U.S. president to send U.S. forces into war without a congressional declaration, who cited UN authority in committing the United States to a "police action" on the Korean Peninsula.

But what are the constitutional limits on the president's war powers? And how do they square with the actions of recent presidents, including President Trump?

Constitutionally speaking, the War Powers Act is entirely superfluous, an attempt to legalize extra-constitutional war powers on the part of the executive. The U.S. Constitution is crystal clear on the roles of both the president and Congress: Congress has the power to declare war, to "raise and support armies," to "provide and maintain a navy," and to "make rules for the government and regulation of the land and naval forces." Additionally, Congress is given the power to raise, organize, arm, and discipline the militia. In other words, per the Constitution, Congress is given almost all authority over the U.S. Armed Forces, including the power to fund and regulate them, as well as to commit them to combat.

By contrast, the president is given only the authority to be "Commander in Chief of the army and navy



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of the United States, and of the militia of the several states, when called into the actual service of the United States.”

It is often assumed that the president’s role as Commander in Chief of the armed forces constitutes a writ of authority to send U.S. forces into battle, as long as the engagement is of limited duration and narrow objectives. But waging war according to executive whim is the prerogative of a monarch, not a president, as Alexander Hamilton, in *the Federalist*, No. 69, was careful to explain:

The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies — all which, by the Constitution under consideration, would appertain to the legislature.

In other words, the normal mechanism for waging war under the Constitution was to be a congressional declaration of war. Traditionally, a declaration of war served a number of purposes, including putting all other sovereign nations on notice that a state of war exists, and that aid to an enemy power might be construed as a hostile action. A declaration also in effect put a nation’s own citizens on legal notice that they could no longer travel to or engage in commercial or other forms of intercourse with a hostile power or its citizens.

But since the end of World War II, declarations of war have become almost unknown, not only in the United States but across the world. This is because under the UN system, declarations of war are deemed obsolete exercises of military sovereignty. Instead, war must be authorized by a UN resolution. This is why President Truman ignored Congress in committing the United States to the Korean War.

The modern UN system, then, requires only that a government, in the person of its chief executive (in our case, the president), secure authority from the UN before going to war. Congress is completely cut out of the picture. In recent years, the authority of NATO (a UN subsidiary) has also been used to justify acts of war, as with President Obama’s recent war on Libya. In that conflict, the Obama administration did not even seek the watered-down congressional authorization required by the War Powers Act, and was eventually cited for contempt of Congress.

The reason the United States has abandoned the congressional declaration of war is our membership in the United Nations and international military alliances such as NATO. As a result, we now have presidents waging war at their pleasure, exactly like the monarchs of the British Empire. Absent a United Nations, the War Powers Act would be completely unnecessary, since the U.S. Constitution already imposes robust limits on presidential war powers. And even with the UN, the War Powers Act only reinforces the falsehood that the president has the authority to commit the United States to war.

The Founders understood that the power to wage war should never reside in a single person. Only by quitting the UN and restoring to Congress its constitutional war powers will the plague of undeclared presidential wars come to an end.



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