

Learning about Legislation #7 - War Powers/Authorizations for Use of Military Force

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With the rising tensions between the United States and North Korea, there has been increasing news coverage on the topic of war powers. The Washington Post [reported](#) that 4 in 10 Americans thought, incorrectly, that the Constitution grants the power to declare war to the President. A little more than half of respondents got that question right. In light of that situation, it seems appropriate to look at how our nation deals with war powers, and how that power has shifted in the last century.

The Constitution gives the power to declare war to the Congress. Amidst a long list of Congressional responsibilities, Article I, Section 8 of the Constitution says “The Congress shall have power...to declare war.” But it also says, in Article II, Section 2, “the President shall be commander in chief of the Army and Navy of the United States.” This check and balance, which was meant to protect the population by ensuring that any war was well debated and supported by the majority, lead to several conflicts. If the President is the head of the armed forces, can he deploy troops overseas to a location where the Congress has not declared war? How do we deal with situations where our troops are involved in armed conflict, but the Congress hasn’t declared war?

After the conflict in Viet Nam, a “police action” where Congress never declared war, Congress decided to take legislative action. In 1973 they passed the War Powers Resolution. This extensive bit of legislation is described as follows by the Library of Congress:

“The first part states the policy behind the law, namely to insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, and that the President's powers as Commander in Chief are exercised only pursuant to a declaration of war, specific statutory authorization from Congress, or a national emergency created by an attack upon the United States...;

the second part requires the President to consult with Congress before introducing U.S. armed forces into hostilities or situations where hostilities are imminent, and to continue such consultations as long as U.S. armed forces remain in such situations...;

the third part sets forth reporting requirements that the President must comply with...;

the fourth part of the law...requires that U.S. forces be withdrawn from hostilities within 60 days of the time a report is submitted unless Congress acts to approve continued military action...;

the fifth part of the law sets forth certain definitions and rules to be used when interpreting the War Powers Resolution.”

When Congress wants to authorize hostilities, they pass legislation called “Authorization for Use of Military Force” or AUMF. After the 9/11 attacks, the Congress passed Authorization for Use of Military Force Against Terrorists, in 2002. That AUMF is still in effect, and has been interpreted as giving the last three president the right to take military action not just in the Middle East and Afghanistan, but also in the Philippines, Georgia, Yemen, Djibouti, Kenya, Ethiopia, Eritrea, and Somalia

This situation is made more complex, though, by nuclear weapons. A PBS article describes that situation best, noting “During the Cold War, the U.S. military built an elaborate system to control the thousands of nuclear weapons in this country. There are many checks and balances, no officers who work with intercontinental ballistic missiles, nuclear armed aircraft, or nuclear submarines can launch missiles alone. They always work in twos, or sometimes entire teams. But there is an exception to that. The entire system is designed to respond to the sole decision of the president.” So, while the president could not (Constitutionally) declare war entirely on his own, he can (procedurally) make the decision and have the armed forces drop a nuclear bomb anywhere on his say-so alone.

If you find this situation disturbing, there is a legislative option that seeks to remedy this problem which you may want to ask our MoCs to support:

H.R. 669: Restricting First Use of Nuclear Weapons Act of 2017

S. 200: Restricting First Use of Nuclear Weapons Act of 2017

<https://www.govtrack.us/congress/bills/115/s200/text>

These identical bills were introduced in the House by Rep. Ted Lieu (D-CA) and in the Senate by Sen. Ed Markley (D-MA) back in January. In the House there are 58 co-sponsors (57D, 1R) and in the Senate there are 9 co-sponsors (8D, 1I). This bill would limit the President's right to unilaterally authorize a first-strike nuclear attack. It does, however, preserve the right of a president to unilaterally respond, should a foreign power attack first. None of our MoCs are amongst those co-sponsors, but Representative Fitzpatrick is a member of the House Foreign Affairs Committee, where this bill is pending. Please consider contacting him if this issue is of importance to you.