

From the start, presidents and congress have jockeyed for control over war powers. Article I of the Constitution grants Congress the exclusive authority to declare war, while Article II names the President as “Commander in Chief: of the armed forces. The jockeying reached a watershed moment of congressional assertiveness with the passage of the 1973 War Powers Act. Since then, however, presidential war-making power has been in a state of constant expansion and only accelerated by recent presidential military action in the Middle East.

- What is the War Powers Resolution?
 - The War Powers Resolution was enacted in November 1973 over an executive veto by President Richard Nixon.
 - The Law’s text frames it as a means of guaranteeing that “the collective judgment of both the Congress and the President will apply” whenever the American armed forces are deployed overseas. It requires the President to consult with the legislature “in every possible instance” before committing troops to war.
 - The Constitution of the United States divides the war powers of the federal government between the Executive and Legislative branches: The President is the Commander in Chief of the armed forces (Article II, section 2), while Congress has the power to make declarations of war, and to raise and support the armed forces (Article I, section 8).
 - Over time, questions arose as to the extent of the President’s authority to deploy US armed forces into hostile situations abroad without a declaration of war or some other form of Congressional approval.
 - Congress passed the War Powers Resolution in the aftermath fo the Vietnam War to address these concerns and provide a set of procedures for both the President and Congress to follow in situations where the introduction of US forces abroad could lead to their involvement in armed conflict.
 - Conceptually, the War Powers Resolution can be broken down into several distinct parts.
 - The first part states the policy behind the law, namely to “ensure that the collective judgment of both the Congress and the President will apply to the introduction of US 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 US.
 - The second part requires the president to consult with Congress before introducing US armed forces into hostilities or situations where hostilities are imminent and to continue such consultations as long as the US armed forces remain in such situations.
 - The third part sets forth reporting and requirements that the president must comply with any time he introduces US armed forces into existing or imminent hostilities. Section 1543(a)(1) is particularly significant because it can trigger a 60-day time limit on the use of US forces.

- In 2011 President Barack Obama initiated military action in Libya without congressional authorization.
- What is Authorization for the Use of Military Force (AUMF)?
 - On September 18, 2001, President George W. Bush signed the AUMF into law in response to the 9/11 attacks. It authorized the president “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or person, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”
 - Rather than authorizing a broad and unlimited “war on terror,” the AUMF’s mandate is specifically tied to those responsible for the 9/11 attacks.
 - The AUMF has continued to be used as a legal basis for the US military action across the Middle East.
 - A separate AUMF, passed in 2002, grants the president the authority “to defend the national security of the United States against the continuing threat posed by Iraq” and has been used to provide a basis for ongoing anti-ISIS operations specifically in Iraq.
- AUMF is still being used
 - Successive administrations have argued that the AUMF obtained in 2001 applies to the fight against ISIS and that approval from Congress to conduct operations against the ISIS threat is unnecessary.
 - In a written statement to the New York Times, Obama’s White House legal team defended the campaign against ISIS in 2014, writing: “The President may rely on the 2001 AUMF as statutory authority for the military airstrike operations he is directing against ISIL.”
 - The Obama White House further explained that it interpreted the 2001 AUMF to cover the use of force against ISIS based on the group’s “longstanding relationship with al-Qaida and Osama bin Laden; its long history of conducting, and continued desire to conduct, attacks against US persons and interests, and extensive history of US combat operations against ISIL dating back to the time the group first affiliated with AQ in 2004; and ISIL’s position - supported by some individual members and factions of AQ-aligned groups - that it is the true inheritor of Osama bin Laden’s legacy, the President may rely on the 2001 AUMF as statutory authority for the use of force against ISIL, notwithstanding the recent public split between AQ’s senior leadership and ISIL.”
 - The Trump administration has continued to use the broad interpretation of the AUMF. In two letters published by The New York Times in 2018, officials from the Pentagon and the State Department wrote: “The 2001 AUMF authorizes the United States to use force against al-Qaida, the Taliban, and associated forces and against ISIS.”

- Kaine's proposed legislation, however, has its limitations. The War Powers Resolution restricts actions only by the United States military, so it would not stop Trump from carrying out targeted attacks on Iranian military leaders or other discrete operations, as long as he carried them out covertly under the authority of the CIA.
 - Trump's DOJ would also probably take the position that the resolution infringed on the president's constitutional authority, and so the president might just ignore the resolution.
 - Also, under Article II of the Constitution, the president may act to respond to imminent threats to the nation and the UN charter includes an exception for self-defense. The excuse of "imminent danger" would also most likely be used by the White House to conduct further attacks, similar to the justification for the strike on Soleimani which started all of this.
- The vote could come this week but it is still unclear how the impeachment trial will affect it.
- Recent examples have shown GOP lawmakers' willingness to go against Trump when it comes to preserving Congressional powers.
 - Seven Senate Republicans voted in March to direct Trump to withdraw US forces from supporting a Saudi-led coalition fighting in Yemen's civil war, a resolution that Trump later vetoed and Congress failed to override.
 - Eleven GOP senators voted with Democrats in September to terminate a national emergency declaration Trump used to justify shifting military funds to construction of the border wall without congressional consent. Twelve GOP senators voted for a similar resolution in March.

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