

The Declare War Clause, Part 7: The Cold War and Korean War

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This Legal Sidebar is the seventh part of an [eight-part series](#) that discusses the [Declare War Clause](#) in Article I, Section 8, Clause 11 of the Constitution, which grants Congress the power “To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water[.]” The power to take the nation to war is a central element of the Constitution’s scheme of war powers, but interpretation of the Declare War Clause is complex and evolving. This Sidebar series discusses the Supreme Court’s jurisprudence related to declarations of war by Congress and highlights interbranch practices that illuminate the executive and legislative branches’ sometimes differing interpretations of the clause. This Sidebar examines the legal implications of Congress’s postwar use of statutory authorizations, rather than declarations of war, to provide for military action. Additional information on Congress’s [war powers](#) and the President’s powers as [Commander-in-Chief](#) can be found in the [Constitution Annotated](#).

The Cold War, NATO, and the United Nations

The end of the Second World War brought changes in U.S. policy and practice toward declarations of war and the exercise of military action more generally. Congress has not formally declared war since World War II and has instead relied [solely on statutory authorizations](#) for the use of military force when permitting the President to engage in armed conflict. The Second World War’s conclusion also brought an end to the [pattern](#) in which the United States’ buildup of forces was followed by extensive demobilization and return of troops to the homeland. After World War II, the United States permanently stationed U.S. troops in foreign countries, [assumed greater responsibility](#) for global security, and made defense pacts and military commitments with its allies, such as those in the North Atlantic Treaty Organization (NATO). Concerns over Soviet expansion and global influence also led to the Cold War in which the United States adopted a [strategy](#) to contain Soviet power around the globe.

These dynamics undermined clear distinctions between states of war and periods of peace and led to interbranch debate over presidential power to deploy and station troops abroad. In what was called the “[Great Debate](#),” Congress [engaged](#) with the Truman Administration over whether congressional authorization was necessary for the President to send 100,000 troops to Western Europe to demonstrate support to NATO and counter the threat of Soviet expansion. The Senate was considering a [resolution](#)

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providing that the President should not transfer forces until Congress formulated a policy on the troop assignment, but President Truman took the [position](#) that his constitutional power as Commander-in-Chief authorized him to send troops anywhere in the world. The debate was ultimately resolved through a compromise [resolution](#) that approved the transfer but called for congressional authorization for troops beyond four divisions.

The [North Atlantic Treaty](#) also gave rise to constitutional questions of whether the treaty's requirement for collective self-defense would usurp Congress's power to declare war. Under [Article 5](#) of the treaty, "an armed attack against one or more [NATO country] in Europe or North America shall be considered an attack against them all" During Senate hearings, Secretary of State Dean Acheson [stated the view](#) that Article 5 would not infringe on Congress's power to declare war because Article 5 commits NATO countries to take measures they deem necessary, but "does not mean that the United States would automatically be at war" if a NATO ally were attacked. With this assurance, the Senate gave its [advice and consent](#) to ratification of the North Atlantic Treaty, although the Senate declined to [attach](#) an [understanding](#) to its resolution of ratification confirming Acheson's interpretation.

The [Charter of the United Nations](#) (UN) also raised questions about how postwar international institutions would integrate into the constitutional system. The creation of the UN Security Council, which is [empowered](#) to ensure global peace and security, prompted [debate](#) over [whether](#) a Security Council resolution can function as a constitutional substitute for a congressional declaration of war or authorization for use of military force. The Security Council's place in the Constitution's war powers scheme would come to the fore when presidential administrations, starting with the [Truman Administration](#) during the Korean War, [cited](#) Security Council [resolutions](#) as a part of the legal basis to initiate military action without first seeking congressional authorization.

The Korean War

President Truman ordered U.S. [military intervention](#) in the Korean peninsula after forces from the Democratic People's Republic of Korea (or North Korea) crossed the 38th parallel in June 1950 seeking to take over the portion of the peninsula under control of Republic of Korea (or South Korea). The hostilities [evolved](#) into a large-scale conflict between North Korea and the People's Republic of China, on one side, and South Korean and UN forces led by the United States, on the other. The UN Security Council [authorized](#) the UN-based military response, but President Truman did not seek congressional authorization for the military action under domestic law, and Congress did not enact a declaration of war or authorization for use of military force.

After some Members of Congress [questioned](#) whether the President had domestic legal authority for intervention, the Department of State prepared a [memorandum](#) defending the conflict as an "[international police action](#)" to enforce the UN Security Council resolutions rather than a war. Citing a list of [85 instances](#) in which past Presidents deployed forces overseas without express congressional authorization, the memorandum argued that historical practice demonstrated that the Constitution does not require congressional permission for the President to use military force to protect American interests abroad. The listed incidents ranged from the pursuit of pirates to multiyear overseas missions, but none approached the scale of conflict reached in the Korean War, which [involved](#) over 5.7 million American military personnel and over 36,000 American casualties. The Truman Administration's constitutional theory was never challenged in court, and Congress ultimately [extended](#) the draft and appropriated funds for the war effort.

One aspect of President Truman's plans to support the Korean War by managing the domestic defense industrial base did reach the Supreme Court. In *Youngstown Sheet & Tube Co. v. Sawyer* (examined in more detail in [other CRS products](#)), the Supreme Court [deemed](#) the Truman Administration's plans to avoid a labor strike's effects by seizing and operating private steel mills to be without statutory or constitutional basis. In reaching its conclusion, the Supreme Court [rejected](#) the view, also

asserted by President Roosevelt during World War II, that Presidents have constitutional power to contravene Congress's economic legislation when a President believes following the law would diminish the United States' war effort and contribute to a national emergency.

The Formosa and Middle East Authorizations

After the Korean War, concerns that communist governments might commit acts of aggression in Formosa (now Taiwan) and the Middle East led Congress to pass and President Eisenhower to sign authorizations for use of military force permitting the President to take military action in those regions. The [Formosa authorization](#), which was [repealed](#) in 1974, permitted the President to “employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa, and the Pescadores against armed attack” The [Middle East authorization](#) provides that the President may “undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance.” That resolution also provides, among other things, that “the United States is prepared to use armed forces to assist . . . nations requesting assistance against armed aggression from any country controlled by international communism,” provided that the U.S. actions are consistent with its treaty obligations and the Constitution.

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