

The Declare War Clause, Part 8: Vietnam War Through 21st-Century Conflicts

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This Legal Sidebar is the last in 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 President’s authority to take military action absent a declaration of war or clear statutory authorization from Congress. Additional information on Congress’s [war powers](#) and the President’s powers as [Commander-in-Chief](#) can be found in the [Constitution Annotated](#).

The Vietnam War

After North Vietnamese patrol boats reportedly [attacked](#) U.S. naval vessels in international waters in Southeast Asia, Congress enacted a joint resolution, known as the [Gulf of Tonkin Resolution](#), authorizing the President to “take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.” As the conflict unfolded and spread beyond Vietnam’s borders, some Members of Congress [questioned](#) whether military operations had become so extensive that they exceed the Gulf of Tonkin Resolution’s scope and required a declaration of war. President Lyndon Johnson [claimed](#) the Constitution alone provided sufficient authority and would have done so even if Congress never enacted the Gulf of Tonkin Resolution. Executive branch attorneys, on the other hand, [relied](#) on a combination of the President’s Article II powers and the Gulf of Tonkin Resolution as domestic legal authorities. In an executive branch legal opinion addressing the introduction of U.S. forces into Cambodia, then-Assistant Attorney General (and later Chief Justice of the Supreme Court) William Rehnquist took the [view](#) that the military action fell “short of war” and was “the sort of tactical decision traditionally confided to the Commander in Chief in the conduct of armed conflict.”

In 1971, Congress passed and President Nixon signed laws [repealing](#) the Gulf of Tonkin Resolution and [calling](#) for the “prompt and orderly” withdrawal of U.S. troops at the “earliest practicable date.” U.S.

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troop presence diminished considerably during this period as the Nixon Administration carried out a policy to transfer control of the conflict to South Vietnamese forces, but the Nixon Administration [continued](#) aerial campaigns after the Gulf of Tonkin Resolution was rescinded. Congress eventually passed, and the President signed, [legislation](#) prohibiting [use](#) of appropriated funds for military operations in Southeast Asia and setting a [ceiling](#) on U.S. civilian and military personnel in Vietnam. By 1973, Congress's dissatisfaction with presidential use of armed forces without congressional authorization or consultation led it to enact the [War Powers Resolution](#) ([discussed](#) in detail in [other CRS products](#)) over President Nixon's veto.

Federal courts considered several cases contesting the constitutionality of military action in Vietnam and Southeast Asia, but no case successfully challenged the conflict or permanently constrained presidential action. Some [lower](#) courts [held](#) that these [cases](#) presented nonjusticiable [political questions](#), and the Supreme Court affirmed one district court's [dismissal](#) of a class action challenge to the constitutionality of the Vietnam War on that basis. Other lower courts [concluded](#) that the [question](#) of whether congressional authorization was required for military action could be justiciable in some circumstances. These courts either [held](#) that Congress [authorized](#) military action by appropriating funds and extending the compulsory draft or that judicial intervention was not appropriate while the President was in the [process of winding down](#) the conflict.

One district court issued an [order](#), later [reversed](#) on appeal, that enjoined an air campaign in Cambodia on the grounds that the military action exceeded the President's authority. Following a [complex](#) set of [rapidly](#) issued [opinions](#) during an appeals process in which Supreme Court Justices served as judges on the U.S. Court of Appeals for the Second Circuit, the stay was implemented for [less than 24 hours](#).

Post-Cold War Operations

After the end of the Vietnam War and enactment of the War Powers Resolution, Presidents continued to claim constitutional authority to introduce troops in hostile circumstances without advance congressional authorization. In the period between the close of the Vietnam War and the First Persian Gulf War, examples include

- President Ford's [evacuation](#) of [individuals](#) from Vietnam and Cambodia despite Vietnam-era appropriations restrictions;
- President Carter's order to [rescue hostages](#) held in the American Embassy in Tehran;
- President Reagan's [introduction](#) of 1,900 land forces into the Caribbean country of Grenada to protect American citizens during a violent transition in government; and
- President George H. W. Bush's [deployment](#) of 11,000 ground forces into Panama resulting in the arrest by U.S. forces of Panamanian leader Manuel Noriega.

After President Reagan sent a [contingent of U.S. forces to Lebanon](#) in 1982 as part of multinational peacekeeping mission, Congress passed the [Multinational Force in Lebanon Resolution](#), which authorized participation in the mission, but [limited](#) that authorization for 18 months. President Reagan signed the joint resolution, but noted in a [statement](#) that the law should not be interpreted to acknowledge that Congress could intrude on the President's power to use force beyond statutory timelines.

The Persian Gulf War of 1991

When a contingent of Iraqi forces entered Kuwait in 1990, the UN Security Council issued a [series of resolutions](#) authorizing countries to take "all necessary means" to force Iraqi withdrawal. In January 1991, Congress [authorized](#) the President to use military force to achieve the Security Council resolutions' objectives, provided the President determined that diplomatic and other peaceful means were not

successful in obtaining compliance with the Security Council's aims. Although President George H. W. Bush requested the congressional authorization, [he](#) and [officials](#) in his Administration also expressed the view that the President possessed constitutional authority for the military action even if Congress had not enacted the resolution.

The Clinton Administration

President Clinton claimed authority for several military actions overseas, including [deployment](#) of up to 20,000 troops in Haiti, multiyear military interventions with air campaigns in [Bosnia](#) and [Kosovo](#), and a humanitarian relief mission in [Somalia](#). Among other legal rationales, Clinton Administration attorneys [opined](#) that these operations were not of sufficiently significant “[nature, scope, and duration](#)” that they interfered with Congress's power to declare war. In some cases, the executive branch [argued](#) that Congress provided funding or enacted other measures that authorized or contemplated military action. Congress also exerted some influence over these missions through limitations on appropriations of funds. For example, Congress passed, and President Clinton signed into law without constitutional objections, legislation that set [specific](#) end [dates](#) after which funds could no longer be used to support the action and [limited the scope](#) of some missions during this period.

September 11, 2001

Shortly after the September 11, 2001, terrorist attacks on the United States, Congress passed and President George W. Bush signed into law a [joint resolution](#) authorizing the President to use force against the nations, organizations, and persons the President determines were responsible for the attacks. The Bush Administration initially requested that Congress provide [broader authorization](#) to use force “to deter and pre-empt any future acts of terrorism or aggression against the United States[,]” but that language was not enacted.

The Bush Administration did not view congressional authorization as necessary for its post-September 11 invasion of Afghanistan and related military actions. In late September 2001, the Office of Legal Counsel (OLC) in the Department of Justice [opined](#) that the President already possessed independent constitutional authority to respond to the terrorist attacks. In OLC's view, the joint resolution “[confirmed](#)” the President's power, but was narrower than the constitutional authority under Article II that the President already possessed. Although Congress declined to adopt the Bush Administration's proposal for a more comprehensive authorization to deter future attacks, OLC [reasoned](#) that such congressional authorization was not legally necessary because Article II of the Constitution provided the President plenary authority to “pre-empt . . . terrorist threats from new quarters.”

The Bush Administration OLC also [opined](#) that the Declare War Clause does not constrain presidential power or prohibit the President from initiating a full-scale war without a declaration of war or congressional authorization. This conclusion marked a departure from [earlier OLC opinions](#), which analyzed whether proposed military actions were of such a significant scale that they could rise to the level of a war which only Congress has the power to declare. During the [Obama](#) and [Trump Administrations](#), OLC reverted to the executive branch's earlier interpretation that the Declare War Clause limits presidential power, at least in the case of a full-scale war with another country. Although OLC [withdrew](#) some legal opinions addressing post-September 11 military actions, it has not withdrawn the Bush Administration's narrow interpretation of the Declare War Clause. (As discussed in other CRS products, the Supreme Court also [curtailed](#) some of the Bush Administration's conduct of its post-September 11, 2001, actions, particularly in the context of [detainees](#) and [military commissions](#).)

2003 Iraq War

After the George W. Bush Administration raised concerns over Iraq's noncompliance with UN Security Council resolutions and possible acquisition of weapons of mass destruction, Congress passed and President Bush signed into law a [joint resolution](#) authorizing the President to use force to (1) defend the United States' national security "against the continuing threat posed by Iraq," and (2) enforce relevant Security Council Resolutions. While President Bush received authorization for the military action, executive branch attorneys also took the [view](#) that such authorization was not legally necessary because the President possessed independent constitutional authority to embark on the conflict.

Other 21st-Century Operations

In more recent decades, Presidents Obama, Trump, and Biden have each claimed independent constitutional authority to conduct military operations without first seeking congressional approval. These 21st-century conflicts include air assault campaigns in Libya during the [Obama Administration](#); airstrikes against Syrian chemical weapons facilities in the [Trump Administration](#); and air strikes targeting Iran-backed militant groups in Yemen and the Red Sea during the [Biden Administration](#).

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