

A Better Approach to War Powers

BY TIM KAINÉ

The hardest call during my first year in the Senate was my vote to authorize military force in Syria to punish President Bashar al-Assad for using chemical weapons against his citizens. When I was sworn in on January 3rd, 2013, I expected difficult votes. But I did not anticipate such a profound vote within my first nine months. Only the 18 Senators who serve on the Foreign Relations Committee had to take that vote on September 4, following President Barack Obama's decision to ask Congress to formally authorize a military response. But as tough as the vote was, I am glad the President brought it to Congress instead of proceeding on his own.

The framers of the Constitution had a clear view. Congress must formally approve the initiation of significant military action and the President, as Commander-in-Chief, is responsible for the day-to-day management of a military action once initiated. The framers understood that a President might need to act before Congressional consideration to defend against attack or protect vital American interests. This made particular sense in the days when Congress frequently recessed for lengthy periods and transportation and communication technology made mustering the body for decision-making very time-consuming. But, even in the instance when a President unilaterally acted to defend the nation, it was still assumed that Congress had to formally ratify the decision to begin military action.

While the constitutional language is clear, the American practice has been anything but consistent. Congress has only declared war five times while Presidents have initiated military action well over 120 times. In some of these instances, Congress subsequently ratified a Presidential decision either by formal approval or some informal acquiescence such as appropriating funds for the effort. But in other instances, a President has acted without concern for Congressional approval. Most recently, President Barack Obama committed military forces to NATO action against Libya in 2011 without Congressional approval. He was formally censured by the House of Representatives for doing so.

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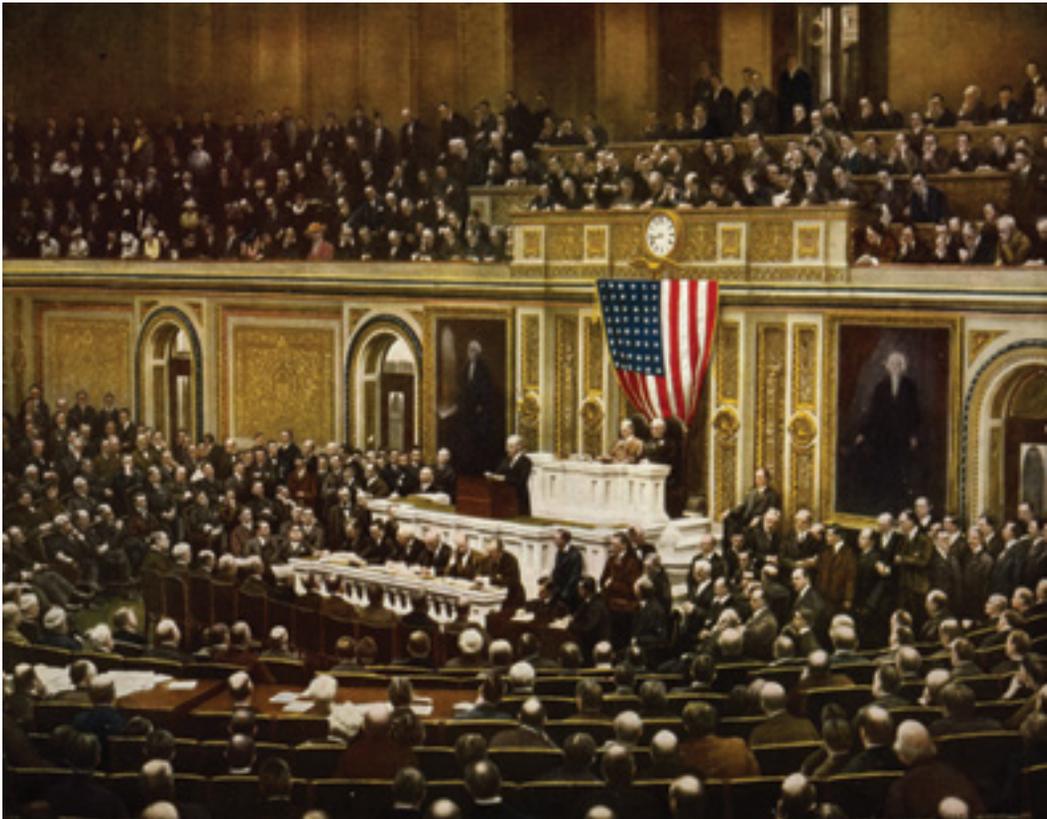
The variance between constitutional language and our historical practice is not just about executive overreach. Congress has often wanted to avoid accountability for a tough decision.

Letting the President make the decision allows members to have it both ways—appear supportive so long as the operation is successful or be critical if the operation does not work out as planned. This abdication hurts the public by depriving them of the opportunity to witness, and learn from, meaningful Congressional debate about whether military action is in the national interest.

In the summer of 1973, angered by President Richard Nixon’s secret expansion of the Vietnam War into Laos and Cambodia,

Congress passed the War Powers Resolution, purporting to solve this tough policy issue by creating a process for consultation between the executive and legislature. It was a hyper-partisan time and the emotions of the ongoing Vietnam War made the act controversial. President Nixon vetoed the Resolution and Congress overrode the veto. Subsequent Presidents of both parties have generally asserted that the act is unconstitutional and it has not been followed by either the legislative or executive branches.

I entered the Senate with a personal obsession over war powers questions. Virginia is the most military state in the country, with a huge population of active duty, guard, reserve, veterans, DoD civilians, military contractors,



President Woodrow Wilson asking Congress to declare war on Germany on 2 April 1917.

national security professionals, diplomats and all their families. With nearly one in three Virginia citizens directly connected to the military, decisions about when to initiate war affect us very deeply. And especially at the end of nearly 13 years of war in Iraq and Afghanistan, we owe it to our warfighters to clear up any confusion in how we make these critical decisions. We could hardly commit a more immoral public act than requiring a volunteer military force to risk their lives in battle without a clear political consensus supporting their mission.

With my own personal passion on the issue, I was aware of the constitutional intent, the inconsistent history of the executive and legislative branches and the failed 1973 effort to create a more workable process. I was also aware of very strong work done by the University of Virginia's Miller Center National War Powers Commission on this very issue. The Commission, chaired by former Secretaries of State James Baker and Warren Christopher, was composed of a bipartisan roster of talented leaders from Congress, the executive branch, the military, the diplomatic corps and academia. In 2008, they proposed a War Powers Consultation Act designed to allow the President and Congress to each exercise their full constitutional role in a clear and practical process on war powers questions. The Commission briefed Congress and incoming members of the Obama Administration, but the time wasn't right for action. I took to the floor of the Senate in July 2013, the 40th anniversary of Senate passage of the 1973 Act, to announce that the time for action is now and that I was initiating an effort with Senator John McCain, based on the Miller Center's work, to update and improve the old law.

Within weeks after commencing our effort, we were confronted with a real test case: the Syrian civil war and Syrian President Bashar al-Assad's use of chemical weapons against civilians. After World War I, the nations of the world convened to ban chemical weapons. The international community decided that because chemical weapons are indiscriminate, nearly indefensible, and kill civilians and soldiers alike, their use would be forbidden. And in the 90 years since the international ban, the ban has protected citizens and service members in conflicts around the globe.

Since joining the Senate, I have been involved in dialogue about the Syrian civil war and what the U.S. should do about it. We are the largest provider of humanitarian aid to Syrian refugees who are currently streaming into Jordan, Lebanon, Turkey, and Iraq. And, we are working with other nations to get the Syrian government and opposition to discuss a negotiated end to the civil war. But the use of chemical weapons, against a clear and important international norm, raised the stakes. And the question became—would America go so far as to respond with military force?

Many Presidents would have acted unilaterally to do so. But in discussions with the White House and my colleagues, I urged President Obama to respect the constitutional framework and seek Congressional approval. We send a stronger signal when the executive and legislature are unified on matters of war.

The President did bring the matter to Congress to the surprise of many. The Foreign Relations Committee—by a narrow vote—supported the use of military force to punish the use of chemical weapons and degrade al-Assad's ability to use them in the future. That show of resolve changed the previous

intransigence of Syria and Russia about these weapons and produced a diplomatic breakthrough in which an agreement was struck to dismantle the entire Syrian chemical weapons program and stockpile under the supervision of the United Nations. Time will tell if Syria follows through on its commitments. But while the war rages on at great cost to the Syrian people, the elimination of the chemical weapons stockpile is a significant positive for the country and the region.

I believe that the President's decision to seek Congressional approval prior to military action in Syria was the right thing to do. It honored the constitution. It showed Syria and Russia that we were resolved to punish the outrageous use of chemical weapons against civilians. The fact of our resolve then led to a diplomatic breakthrough that is meant to eliminate one of the largest chemical weapons stockpiles in the world. We can learn from this example as we tackle the revision of the ineffective 1973 Act.

That is why Senator McCain and I, on January 26, 2014, introduced the War Powers Consultation Act of 2014 (WPCA). The act clarifies the consultation process between the legislative and executive branches of government and details Congressional procedures requiring that all members take a vote of support or opposition for any significant military action. The proposal creates a permanent Consultation Committee in Congress that would consist of majority and ranking Members of the national security committees (Armed Services, Foreign Relations, Intelligence and Appropriations). Committee members will have access to regular information on the process and the substance of national security matters and will meet with the President periodically. Under the WPCA of

2014, all Members of Congress eventually will be asked to vote on decisions of war. This ensures a deliberate public discussion in the full view of the American public, increasing the knowledge of the population and the accountability of our elected officials. What the WPCA of 2014 does not intend to do is decide the centuries-long debate between the executive and legislative branches of government. It does however codify a process that enables the executive and legislative branches to work together.

I attended a debate in the summer of 2013 on war powers at George Washington University. One student startled me by saying: "I know nothing about war; but I know nothing but war." We have been at war for nearly 13 years and many of our young do not know an America at peace. But, with an all-volunteer force where only 1% of Americans serve in the military, many lack any meaningful



Enlistment poster from WWII

connection with the realities and sacrifices that war entails. We can restore the original constitutional vision of executive and legislative branches working together to make these tough decisions. If we do so, our deliberation and debate will educate our citizens and produce, when necessary, the strongest consensus behind any military mission and the men and women we rely on to carry it out. [PRISM](#)



Passengers in Mexico City wear protective masks to combat the effects of the Swine flu.