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**Doug Bandow: Obama must obey if Congress votes no**

By Doug Bandow - September 11, 2013

With United Nations approval beyond reach and the British parliament voting against military intervention in Syria, President Barack Obama was reduced to threatening unilateral action. Not too much, just enough so the administration won't be "mocked," said one unnamed official. But also enough to violate the Constitution's requirement for a congressional declaration of war.

Then the president surprised his own staff by requesting congressional authority. Yet Secretary of State John Kerry told legislators that the president has the right to attack "no matter what Congress does." President Obama later made the same claim.

They are wrong. The president has no authority to start a war without congressional approval.

The nation's Founders feared just such a president and just such a moment. They revolted against an empire in which the imperious executive routinely took the nation into war for no good reason.

It was not a system they wanted to emulate. Pierce Butler opposed "throwing into [the president's] hands the influence of a monarch, having an opportunity of involving his country in a war whenever he wished to promote her destruction." John Jay pointed to the dubious motives that caused kings "to engage in wars not sanctified by justice or the voice and interests of his people."

So the Framers gave most military powers to Congress: raising and funding the military, writing the rules of war, issuing letters of marquee, and ratifying treaties. Moreover, according to Article 1, Sec. 8 (11), "Congress shall have the power ... to declare war."

Future President James Madison explained the "fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature." Even Alexander Hamilton recognized that the president's authority "would amount to nothing more than the supreme command and direction of the land and naval forces ... while that of the British king extends to the declaring of war."

The Founders recognized that the president might have to respond to attack. However, this was a very limited grant of authority.

George Mason favored "clogging rather than facilitating war." James Wilson observed: "It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is in the legislature at large." Thomas Jefferson approved the "effectual check to the dog of war by transferring the power of letting him loose."

Many presidents push against the Constitution's restrictions, unilaterally employing the military for different operations. However, most such deployments were limited and temporary and many had colorable legislative authority.

Even strong presidents acknowledged limits on their power. George Washington explained: "The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure." Similarly, said Dwight Eisenhower: "I am not going to order any troops into anything that can be interpreted as war, until Congress directs it."

In December 2007, candidate Obama made a similar argument: "The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation."

The Founders' reasons apply today. Wrote James Madison: "Of all the enemies of true liberty, war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instrument for bringing the many under the domination of the few."

If President Obama wants to attack Syria, he needs congressional approval. There is no plausible claim that Syria is preparing to attack America.

The experience of Great Britain is instructive. The House of Commons rejected Prime Minister David Cameron's plan for war.

Asked whether he accepted parliament's decision, the prime minister responded: "It is clear to me that the British parliament, reflecting the views of the British people, does not want to see British military action. I get that and the government will act accordingly."

It is equally clear that the American people do not want to see military action and legislators are leaning against authorizing war. If so, will the president "get that"?

President Obama deserves praise for going to Congress. But he must respect its decision even if the vote is no. Going to war against Syria is not the president's decision to make.