

McClatchy Washington Bureau

 [Print This Article](#)

Posted on Tue, Mar. 22, 2011

Libya assault sets up battle between Obama, Congress

David Lightman and William Douglas | McClatchy Newspapers

last updated: March 22, 2011 09:55:29 PM

WASHINGTON — Sparked by the U.S. military assault on Libya, the historic struggle between the president and Congress over whether and how America should enter war is raging again.

Did the U.S. Constitution authorize President Barack Obama to use force in Libya without Congress' explicit consent? Was the United Nations Security Council vote authorization enough? Can Congress cut off the mission's funding? Should it declare war? What does the Constitution say about all this?

This battle between the legislative and executive branches has been going on since George Washington's administration. The Constitution gives Congress sole authority to declare war, but it makes the president commander in chief.

History shows that both institutions claim authority over war decisions, but presidents often have ordered U.S. troops into battle without congressional approval. At the same time, Congress often has then threatened to push back in various ways unless the president cuts lawmakers into decision-making going forward. That's the dance under way today.

Obama did consult with congressional leaders on March 18, the day before ordering military action in Libya — not to ask their advice, but to inform them of his decision. On Monday, he explained the mission in a two-page letter to Capitol Hill, citing his authority as commander in chief.

White House aides note with gratitude that the Senate voted unanimously on March 1 for the U.N. Security Council to impose a no-fly zone over Libya, which it subsequently did on March 17, and which the White House cites as authorization for the international military action.

But many lawmakers aren't satisfied. They question whether Obama misused his constitutional powers, or at the very least, whether he's complied with the 1973 War Powers Resolution. That requires him to consult Congress before acting, and for Congress to approve any military action within 60 to 90 days or it's canceled.

The Speaker of the House of Representatives, John Boehner, R-Ohio, now wants more information about "our mission in Libya and how it may be achieved." He said that Obama's explanations were insufficient.

Conservatives are feeling heat from tea partiers, part of the grassroots movement that helped elect dozens of congressional Republicans last year.

"Congress needs to get involved, no question," said Judson Phillips, Tea Party Nation founder. "The framers of the Constitution made it very explicit" that declarations of war are "specifically reserved to Congress, not the president."

The Libyan mission, Phillips said, is further evidence that Obama is pursuing an "imperial presidency . . . I'd like to see Congress stand up and do something. Our founding fathers warned us about getting into foreign entanglements without good cause."

Democrats are getting impatient, too, especially antiwar liberals.

"The Constitution, rightly, does not allow a single person to commit the nation to war, even where there is a good reason to do so," said Rep. Jerrold Nadler, D-N.Y.

Congress' strongest lever in this test of strength is the War Powers Resolution, enacted in the Vietnam-Watergate year of 1973 to compel President Richard Nixon's cooperation. Since then, presidents have taken care to confer with lawmakers about military actions, even as they've said the act is an unconstitutional intrusion on their powers. Both branches of government stand their ground on that point, but neither wants the courts to decide the question, since a ruling could limit either branch's powers.

Scholars differ on the War Powers Resolution's boundaries. About all they agree on is that the law at least pressures a president to explain himself and confer with lawmakers, giving them something of a check on executive power.

"The purpose of the War Powers Act was to make the decision to intervene, or go to war, a joint, shared decision between the president and the Congress," said former Indiana Rep. Lee Hamilton, the director of the Center on Congress at Indiana University. "But as a practical matter, the decision to intervene or go to war is a presidential decision," said Hamilton, who was a senior House Foreign Relations Committee member when the law was enacted.

When Congress passed the War Powers Resolution, President Nixon argued in his October 1973, veto message that the act not only was unconstitutional, but also would inhibit America's response to crises.

"If this resolution had been in operation, America's effective response to a variety of challenges in recent years would have been vastly complicated or even made impossible," Nixon wrote. "We may well have been unable to respond in the way we did during the Berlin crisis of 1961, the Cuban missile crisis of 1962, the Congo rescue operation in 1964, and the Jordanian crisis of 1970 — to mention just a few examples."

Congress overrode Nixon's veto.

"If the president can deal with the Arabs, and if he can deal with the Soviets, then he ought to be able and willing to deal with the U.S.

Congress," said House Majority Leader Thomas P. "Tip" O'Neill, D-Mass., at the time.

Congress still matters, if only because it's closer than a president to the voters, and if antagonized, could cut off funding for military operations.

"Presidents can and have engaged in foreign military operations without authority from Congress, but it is unwise to do so for anything but the most minor undertakings," said Roger Pilon, director of the Center for Constitutional Studies at Washington's Cato Institute, a libertarian research group.

Congress and the White House have been wrestling with the scope of the executive's war powers since the nation was founded.

In 1790, Thomas Jefferson, then secretary of state, advised Washington, the nation's first president, that "the transaction of business with foreign nations is executive altogether . . ." And, Jefferson emphasized: "Exceptions are to be construed strictly."

U.S. presidents have sent forces into harm's way dozens of times — such as Jefferson's 1801 decision to send the new U.S. Navy to sink and burn pirate ships off the Barbary Coast, now Libya, which he didn't even report to Congress for six months.

By declaring war, Congress asserts its clout and announces the enormity of the mission, but that was last done in World War II. Since then, calls for formal declarations of war have been largely dismissed. Vietnam, the Persian Gulf War of 1991, the Bosnia and Kosovo campaigns of the 1990s, and the Iraq and Afghanistan wars of the past decade — Congress didn't declare war for any of them. It authorized U.S. force short of a formal war declaration in some, but not even that in others.

"The last thing you want, if you need to use military action, especially briefly, is to have a declared war each time. A formal declaration puts the nation in a legal state of war, triggering vast other powers" for the president, Pilon said. "Be careful what you ask for."

The limits of the War Powers Act were strikingly apparent in 1983, when the U.S. invaded the tiny Caribbean nation of Grenada after a military coup overthrew a leftist government and seized control of the island.

Members of Congress wanted a say; O'Neill charged that President Ronald Reagan had engaged in "gunboat diplomacy." Congress approved legislation insisting that U.S. troops be out within 90 days. But the Democrats' efforts to use the act to end the invasion fizzled. The war proved to be popular, and troops left well before the 90-day deadline anyhow.

That scenario could be repeated in the weeks ahead, depending upon how events unfold in Libya.

For the moment, the battle lines are familiar, as Congress buzzed Tuesday with the kind of view offered by Rep. Betty McCollum, D-Minn.

"While I support the current, limited U.S. mission in Libya, I have serious concerns about deepening U.S. military involvement," she said. "President Obama must consult with Congress before further expanding America's commitment in Libya."

ON THE WEB:

[President Barack Obama discusses Libya](#)

[Sen. Lugar statement on Libya](#)

[Congressional Research Service report on the War Powers Act](#)

MORE FROM MCCLATCHY

[A new uncertainty in Libya operation: Who's in charge](#)

[Government shutdown averted for 3 more weeks](#)

[U.S., allies launch strikes at Gadhafi to shield opposition](#)

[Senate rejects 2 partisan budget plans, setting up new talks](#)

%%100,145,242,104,117%%

McClatchy Newspapers 2011