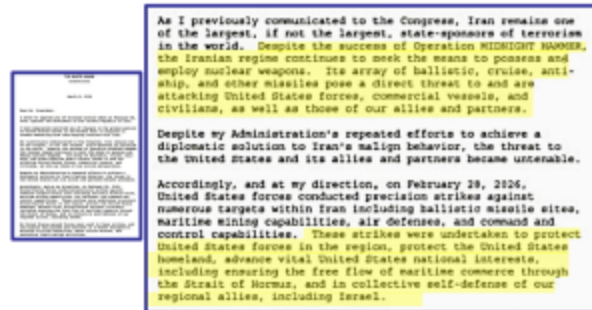


# Without a Congressional declaration of war, do the attacks on Iran violate the U.S. Constitution?

[sites.duke.edu/lawfire/2026/03/05/without-a-congressional-declaration-of-war-do-the-attacks-on-iran-violate-the-u-s-constitution/](https://sites.duke.edu/lawfire/2026/03/05/without-a-congressional-declaration-of-war-do-the-attacks-on-iran-violate-the-u-s-constitution/)

Charlie Dunlap, J.D.

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## [Constitutional Law / Use of Force](#)

Since the President ordered the attacks on Iran (with the U.S. title of [“Operation Epic Fury”](#) (OEF)) there has been no shortage of critics [claiming the actions violated the U.S. Constitution](#). They assert that only Congress has the authority to order this action, and it has not done so. Let’s unpack this charge a bit.

At the outset, it’s important to understand that [two separate legal regimes](#) are at play here: [international law](#) and U.S. domestic law. As one source [explains](#):

“International law primarily focuses on the rights, obligations, and responsibilities of states and international actors, including international organizations and individuals. Domestic law, in contrast, governs the conduct and interactions of individuals, organizations, and entities within a specific country.

Often, analysis under both bodies of law reaches the same conclusion, but a particular activity could be legal under international law, yet prohibited by U.S. domestic law...and vice versa.

(This post will focus on [domestic law](#), while a future one will analyze the conflict under *international law*.)

### ***The President’s rationale***

Though different U.S. government [officials have mentioned various purposes](#) for OEF, let’s take a look at what the White House said in its [March 2 letter to Congress](#), which was, it contended, “consistent with the [War Powers Resolution](#)“:



As I previously communicated to the Congress, Iran remains one of the largest, if not the largest, state-sponsors of terrorism in the world. Despite the success of Operation MIDNIGHT HAMMER, the Iranian regime continues to seek the means to possess and employ nuclear weapons. Its array of ballistic, cruise, anti-ship, and other missiles pose a direct threat to and are attacking United States forces, commercial vessels, and civilians, as well as those of our allies and partners.

Despite my Administration's repeated efforts to achieve a diplomatic solution to Iran's malign behavior, the threat to the United States and its allies and partners became untenable.

Accordingly, and at my direction, on February 28, 2026, United States forces conducted precision strikes against numerous targets within Iran including ballistic missile sites, maritime mining capabilities, air defenses, and command and control capabilities. These strikes were undertaken to protect United States forces in the region, protect the United States homeland, advance vital United States national interests, including ensuring the free flow of maritime commerce through the Strait of Hormuz, and in collective self-defense of our regional allies, including Israel.

### Historical contest

As already suggested, many commentators have argued that OEF is illegal, absent a Congressional declaration of war pursuant to [Article I, Section 8, Clause 11 of the Constitution](#). Notably, in the U.S.' 250-year history, Congress has declared war [only eleven times, the last being against Romania in 1942](#). Beyond declarations of war, Congress has sometimes [statutorily authorized the use of force abroad](#).

Yet a 2023 Congressional Research Service (CRS) [report](#) “lists hundreds of instances in which the United States has used its Armed Forces abroad in situations of military conflict or potential conflict or for other than normal peacetime purposes.” Most of these uses have been without a declaration of war, and many were also without an explicit statutory authority.

The President has [Commander-in-Chief power under the Constitution](#) and is also considered to have [special \(albeit not unlimited\) authority in foreign affairs](#). As discussed below, this has led Presidents of both parties to claim unilateral authority to use force abroad. It is also true that for a variety of reasons, Presidents have been accorded by the courts much [deference in national security and foreign policy](#) matters and some critics say this has often been at the [expense of Congress](#).

The dispute about war powers is not especially new; In 2020 Professor Mariah Zeisberg observed, “The history of war powers has been a history of disputes between branches about what the meaning of ‘war’ is, what the meaning of Congress’s authority over war is, and what kinds of actions do and don’t count as war.” [History.com](#) adds:

When the Constitution was being written and debated, [the framers](#) clearly wanted to break from the British political tradition of investing all war powers in the executive (the king), but **they also knew that legislatures could be dangerously slow to respond to immediate military threats.** So instead of granting Congress the power to “make” war, as was first proposed, founders like [James Madison](#) changed the language to “declare” war. (Emphasis added.)

Thus, when Lincoln took military actions during the Civil War without Congressional authorization, the Supreme Court said in the 1862 [Prize Cases](#) that “The President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority.” Accordingly, though the application is case-specific, there is clear [precedent for the President to lawfully take unilateral military action in certain situations.](#)

Furthermore, the absence of a declaration of war for the last 84 years might also be related to the establishment of the United Nations. Consider this [analysis](#):

Alexander Hamilton observed **as early as 1787 that formal declarations of war had fallen into disuse in international practice.**<sup>5</sup> Other aspects of the change can be attributed to 20th century developments. For much of the United States’ history, international law treated war as a legal and legitimate method for achieving foreign policy goals under certain conditions,<sup>6</sup> but **the Charter of the United Nations (UN) fundamentally restructured the international legal regime related to use of force.**<sup>7</sup> **The UN Charter prohibits war as a foreign-affairs strategy by barring countries from using military force unless in response to armed attack or under an authorization from the U.N. Security Council.**<sup>8</sup> As a result of these and other international legal developments, **declarations of war have become anachronistic in modern international law and relations.**<sup>9</sup> (Emphasis added.)

### ***War Powers Resolution***

What about the [War Powers Resolution](#) (WPR) of 1973? Passed over President Nixon’s veto in the aftermath of the Vietnam War, the drafters sought, according to [CRS](#), “to circumscribe the President’s authority to use armed forces abroad in hostilities or potential hostilities without a declaration of war or other congressional authorization, yet provide enough flexibility to permit him to respond to attack or other emergencies.”

By its own terms, the WPR claims to limit the President’s Commander-in-Chief power:

The constitutional **powers of the President as Commander-in-Chief** to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, **are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency** created by attack upon the United States, its territories or possessions, or its armed forces. (Emphasis added.)

Besides various reporting and calculation requirements, the WPR provides:

**Within sixty calendar days** after a report is submitted or is required to be submitted pursuant to [section 1543\(a\)\(1\) of this title](#), whichever is earlier, **the President shall terminate any use of United States Armed Forces** with respect to which such report was submitted (or required to be submitted), **unless the Congress (1) has declared war or has enacted a specific authorization** for such use of United States Armed Forces, **(2) has extended by law such sixty-day period, or (3) is physically unable to meet** as a result of an armed attack upon the United States. **Such sixty-day period shall be extended for not more than an additional thirty days** if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces. (Emphasis added.)

No President has conceded the WPR's constitutionality, and in recent years, [Presidents of both parties have taken military action without Congressional approval](#). Consequently, it is fair to say that the WPR's record at restraining Presidential action has, at best, been "[mixed](#)." However, Scott Anderson provided this thoughtful [reflection](#) in 2023:

The legal framework that has emerged from this struggle is certain to be a disappointment for those who want to see Congress adopt the central role in wartime decision-making that the War Powers Resolution seemed to promise. But that does not render it a complete failure.

Five decades of experience show not only that the War Powers Resolution has helped to restrain the executive branch and empower Congress in meaningful ways but also that it has served to vindicate the once-maligned idea that Congress has a constitutional role to play in such matters.

In this sense, it has served as an important (if imperfect) corrective to the overreaches of executive authority to which it was responding and **has helped provide a foundation for a more closely shared authority over matters of war and peace moving forward, if and when Congress chooses to assert such a role for itself**. (Emphasis added.)

### ***Presidential duty?***

In his March 2nd report to Congress, the President claimed a threat to the Americans. Some critics argue that the U.S. is in little or no peril from Iran and that it would be years, if ever, [before it has ballistic missiles capable of striking the U.S. homeland](#).

But Americans in the continental United States are not the only ones in peril from Iranian threats. Between [500,000 and one million U.S. citizens](#) are estimated to live in the Middle East, and another [1.5 million live in Europe](#), well within striking distance of Iran's large

inventory of mid- and short-range missiles and drones. What does the law say about the President's duty towards Americans overseas?

In the oft-cited 1860 case of [Durand v Hollins](#), a Federal court described the government's and, particularly, the President's responsibility towards Americans overseas without mentioning any declaration-of-war requirement. In a 1964 article, the *New York Times* [quoted](#) the case's key sections:

**“It is to him [the President]” wrote Justice Nelson, “. . . that citizens abroad must look for protection of person and property . . . [Now] as respects the interposition of the executive abroad, for the protection of the lives or property of the citizens, the duty must, of course, rest in the discretion of the President...**

**“The great object and duty of Government is the protection of the lives liberty and property of the people composing it, whether abroad or at home; and any Government failing in the accomplishment of the object, or the performance of the duty, is not worth preserving.”** (Emphasis added.)

This language buttresses the notion of unilateral Presidential power to protect Americans, including specifically those overseas.

### ***Role of the court?***

**I would not expect the courts to get involved in disputes over war powers.** As Cornell Law's Legal Information Institute [explains](#):

When hostile action is taken against the Nation, or against its citizens or commerce, the appropriate response by order of the President may be resort to force. But the issue, so much a **source of controversy** in the era of the Cold War and **so divisive politically** in the context of United States involvement in the Vietnam War, has been **whether the President is empowered to commit troops abroad to further national interests in the absence of a declaration of war or specific congressional authorization short of such a declaration.**

**The Supreme Court studiously refused to consider the issue in any of the forms in which it was presented. The Court simply denied certiorari in all cases on its discretionary docket. and the lower courts generally refused, on “political question” grounds, to adjudicate the matter.** In the absence of judicial elucidation, the Congress and the President have been required to accommodate themselves in the controversy, to accept from each other less than each has been willing to accept but more than either has been willing to grant. (Citations omitted; emphasis added.)

### ***War powers today***

Where are we today? Back in June, after the strikes on Iran’s nuclear facilities, Chuck Blanchard, who was the Air Force’s general counsel in the Obama Administration, wrote a very insightful and balanced [essay](#) that explained:

For decades, all Presidents have asserted—with support from Department of Justice opinions—that Article II of the U.S. Constitution allows the President to employ military force without prior congressional authorization. As a [Department of Justice report](#) done at the request of President Obama explained, **Article II military force can be used by the President without congressional authorization as long as the military operation “serve sufficiently important interests** to permit the President’s action as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations” as long as the military operation’s “anticipated nature, scope, and duration” did not amount to a “war”. (Emphasis added).

Last Saturday, Harvard Law’s [Jack Goldsmith](#), who served in the Bush Administration (but who is no fan of the President), wrote an essay with the dispiriting title, [“Law is Irrelevant to the U.S. Attack on Iran.”](#) After reviewing various legal authorities and opinions from the Department of Justice’s [Office of Legal Counsel](#), going back many years, Jack concluded:

My point is that the rhetoric of legal constraint and debates about the legality of presidential uses of force are empty. And they deflect attention from Congress’s constitutional responsibility to exercise its political judgment and the political powers that the framers undoubtedly gave it to question, to hold to account, and (should it so choose) to constrain presidential uses of force.

### ***Concluding thoughts***

Though I wouldn’t say law is “irrelevant,” I do think that Jack’s and Chuck’s assessments (and I strongly urge you to read both their essays) are essentially correct; that is, under the facts as we know them now, there is no legal bar to the use of military force that has taken place so far, despite the absence of a declaration of war. That said, Congress still has plenty of [authority](#), e.g., the “[power of the purse](#)” as well as [oversight and investigative capabilities](#), if it chooses to exercise it.

Yesterday, the Senate [rejected](#) a “[war powers resolution](#) that called for congressional approval for military action against Iran.” A vote in the House is expected today, and the [outcome is expected to be close](#).

Still, I have always thought [declarations of war can be important](#). Several years ago, in an article for [Harvard Law’s National Security Journal](#), I cited George Friedman’s articulation of what a declaration of war uniquely achieves:

First, it holds both Congress and the president equally responsible for the decision, and does so unambiguously. Second, it affirms to the people that their lives have now changed and that they will be bearing burdens. Third, it gives the president the political and moral authority he needs to wage war on their behalf and forces everyone to share in the moral responsibility of war. And finally, by submitting it to a political process, many wars might be avoided . . . . A declaration of war both frees and restrains the president, as it was meant to do.

**In other words, there is value in a democracy to a political *process* intended to address issues of war and peace that a discussion about a declaration of war or other authorization can instigate. This process needs to center around the elected leadership who have access to the expertise and resources to dig into the technical issues, classified information, and political subtleties in ways the general public simply cannot.**

In a provocative [essay](#), my friend Professor [Rachel VanLandingham](#) worries that the absence of Congressional action is putting too much pressure on the military to make, in essence, political judgments that they should not be asked to make.

I don't agree with all her contentions (among other things, I think there is a legal basis for the conflict as it stands now), but she does make a very cogent point when she says:

**Congress needs to** pull the purse strings tight when it is being circumvented, pass veto-proof legislation prohibiting war against U.S. allies, exercise its legislative power to either approve war when in the national interest or prohibit it when it's not, reform the 9/11 Authorization for Use of Military Force, and **generally do its job to implement constitutional design.** (Emphasis added.)

I appreciate that a declaration of war, *per se*, can carry political and even legal fallout that, in some situations (including perhaps this one) would not serve the nation's interests. But regardless of the context, what we really need is a robust, *informed* national discussion to ensure a clear understanding of the potential risks and rewards of this conflict.

It's critical that the case for OEF be better made to the American people. This morning the editorial board of the *Wall Street Journal* noted "the remarkable pessimism in the media and political class about the U.S. bombing campaign against the terrorist regime in Iran. Five days into the war, you'd think from the coverage and commentary that the U.S. is losing."

And it needs to happen soon. On Monday, law professor [Eugene Kontorovich](#) wrote, "*A wounded Islamic Republic won't be humbled. It will rebuild its terror capabilities with a vengeance. The amazing confluence of brave and aligned leaders in Washington and Jerusalem won't last forever, and they must treat this as the last opportunity to remove this threat.*"

I think he's right. The absence of a legal requirement for a declaration of war does not obviate the need for our elected branches of government to engage in objective, nonpartisan, and civil discussion and debate about the conflict in order to chart the best way ahead. Our troops now in harm's way deserve nothing less.

*Remember what we like to say on Lawfire®: gather the facts, examine the law, evaluate the arguments – and then decide for yourself!*