

COVER STORY

# GOING TO WAR: WHO DECIDES?

While a U.S. attack on Syria is on hold, the debate over who gets to send American troops into harm's way continues. Here are five questions to help you understand the critical constitutional questions involved.

BY PATRICIA SMITH



President Obama with Speaker of the House John Boehner



**T**he images from a Damascus suburb in August shocked the world: more than 1,400 dead, row after row of bodies with no visible signs of injury and hospitals flooded with victims, many of them children, gasping for breath. It didn't take the United States long to conclude it was the result of a sarin gas attack carried out by the Syrian government against its own people in the midst of a brutal civil war.

President Obama announced that he favored launching air strikes against the Syrian government for its use of chemical weapons, long banned by

international treaties (see box). But then he surprised many by asking Congress to authorize an attack, which few recent presidents have done. (A Congressional vote was postponed while the U.S. and Russia brokered a deal to get Syria to relinquish its chemical weapons. The U.S. says it may still launch strikes if Syria does not comply with the agreement.)

Regardless of whether the vote takes place in Congress, the situation has revived the long-running debate over who has the ultimate authority to order American troops into battle.

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## 1 What does the Constitution say?

The question of who can send American troops off to fight—the president or Congress—has been debated in Washington for more than 200 years. The Constitution divides war powers between the executive and legislative branches—one of many “checks and balances” the Framers devised—but the language is open to interpretation.

That was intentional, says Matthew Spalding of the Heritage Foundation. “The writers of the Constitution knew that there would be circumstances they couldn’t anticipate,” he says.

According to the Constitution, “the President shall be Commander in Chief of the Army and Navy of the United States.” (The Air Force and Coast Guard didn’t exist in 1789, and the Marine Corps is part of the Navy.) Today, the heads of all five branches of the military ultimately take their orders from the president. As the commander of the armed forces, the president has a lot of latitude to take action in response to national security threats.

But the Constitution also says: “The Congress shall have power . . . to declare war” and to “provide for the common defense . . . of the United States.” And since Congress also controls federal spending—what’s known as “the power of the purse”—it can decide whether and how much to fund a war.

“In no part of the Constitution is more wisdom to be found than in the clause which confides the question of war and peace to the legislature, and not to the executive department,” Congressman (and later President) James Madison wrote in 1793.

Legal scholars agree that the Founding Fathers divided war powers partly to prevent Congress from intervening in the

## Why the World Fears Chemical Weapons

More than 100,000 Syrians have already been killed with conventional weapons in the nation’s two-year-old civil war. So why did a chemical weapons attack that left 1,400 dead prompt outrage and calls for action?

“Throughout history, there has been a general revulsion against the use of poisons against human beings in warfare, going back to the [ancient] Greeks,” says Joanna Kidd of King’s College in London. Some date the first chemical weapons ban to 1675, when France and the Holy Roman Empire agreed not to use poisoned bullets.

In World War I (1914-18), chemical warfare—bombs laden with chlorine or mustard gas—accounted for fewer than 1 percent of the 16 million deaths. But the horror of the gas attacks—first carried out by Germany—led to the 1925 Geneva Protocol, an international treaty banning the use of chemical weapons.

It wasn’t until the Iran-Iraq war of the 1980s that they were again used on a mass scale, by Iraq’s Saddam Hussein against Iranian forces. Then, in 1988, Hussein gassed up to 5,000 Kurds in northern Iraq, prompting the U.S. to set up and enforce a “no-fly zone” to protect the Kurds. The threat of chemical and other “weapons of mass destruction” was a factor in the 2003 U.S. invasion of Iraq.

Now President Obama says Syrian President Bashar al-Assad needs to be held accountable for gassing his own citizens. A failure to do so, he argues, will embolden others to use chemical weapons, which as one French expert put it, amounts to “killing people like cockroaches.”

For the U.S., one reason to punish Assad is to send a clear message to Iran over its suspected nuclear weapons program. “The question then becomes should there be [a] consequence for this?” White House Chief of Staff Denis McDonough told Fox News. “The Iranians are going to watch that answer.”



**World War I:**  
A U.S. soldier wears a gas mask.



tactical decisions of a war. It’s often said you can’t have 535 generals (100 Senators and 435 Representatives).

“The way the system is supposed to work is that the two branches are designed to be at odds with each other,” says Spalding. “Presidents are supposed to protect their authority. They naturally want to not defer to Congress, especially on national security.”



## Major Undeclared U.S. Military Actions Since 1950

**1950-53**

### Korean War

When Communist North Korea invades South Korea, the U.N. condemns the invasion. The U.S. provides troops for an international force to defend South Korea.

**1964-75**

### Vietnam War

In April 1964, Congress passes the Gulf of Tonkin Resolution, giving President Johnson broad authority to escalate the war.

**1991**

### Gulf War

The U.N. approves the use of force to repel Iraq's invasion of Kuwait. A few days before the fighting begins, Congress gives its assent.

**1992-94**

### Somalia

U.S. troops are sent in response to famine and civil war. In Oct. 1993, Somali militias shoot down two U.S. helicopters, sparking a 17-hour battle that kills 18 Americans.

## 2 When was the last time the U.S. actually declared war?

Congress has formally declared war only five times\* in American history, most recently during World War II (1941-45). But presidents have sent troops abroad to fight more than 200 times. Usually, there has been some kind of congressional assent beforehand, but not always (see *timeline*).

"From Washington forward, presidents have engaged in military activities without declarations and without authorizations," Spalding says.

In 1950, the U.S. supplied 90 percent of the troops for a United Nations force to aid South Korea in its war with North Korea. Although 34,000 Americans died in the Korean War, President Harry Truman called it a "police action" and never sought approval from Congress.

It was the Vietnam War that set the stage for today's debates about presidential authority and the military. In 1964, after a murky episode in which North Vietnamese boats were said to have attacked a U.S. destroyer in the Gulf of Tonkin, off the coast of North Vietnam, President Lyndon Johnson asked Congress for authorization to respond. Congress passed the Gulf of Tonkin Resolution, giving Johnson broad authority to escalate the U.S. combat role in Vietnam without declaring war. By the end of the war in 1975, 58,000 Americans had been killed.

**The Vietnam War set the stage for today's debate.**

## 3 What is the War Powers Act, and what does it mean?

After Vietnam, many lawmakers felt that war powers had swung too much to the president. In 1973, Congress passed the War Powers Act, which became law after an override of President Richard Nixon's veto. The act requires a president to terminate the use of military force after 90 days unless Congress has authorized it.

"The War Powers Act was designed to prevent presidents from acting precipitously," says Stephen Wayne, professor of government at Georgetown University. "What Congress was saying was the president needs our political support because that's the way our government works."

Presidents have not always seen it that way. They have often sidestepped Congress, even when Congress might have given its stamp of approval.

"Presidents want to take the initiative, show they're strong, act quickly, and they want the element of surprise so they can achieve their objective," says Wayne. "Congress gets in the way of all those things."

The War Powers Act has essentially been ignored by every president since Nixon. President Ronald Reagan sent U.S. troops to Grenada in 1983 without involving Congress. In 1999, President Bill Clinton didn't consult Congress before launching a 72-day bombing of Kosovo (part of the former Yugoslavia), nor did President Obama before the 2011 bombing of Libya.



**1995**

**Bosnia**

After a massacre of Muslims in the war-torn former Yugoslavia, the U.S. leads a month-long NATO bombing of Serbian forces that helps end the war.

**1999**

**Kosovo**

To stop the massacre of ethnic Albanians by Serbs, the U.S. again leads a NATO bombing campaign against the Serbs that lasts two-and-a-half months.

**2001-Today**

**Afghanistan**

Days after the 9/11 terrorist attacks, Congress OKs the use of force against Al Qaeda and its Taliban allies. More than 2,000 Americans have died in the war so far.

**2003-10**

**Iraq War**

Congress approves the U.S. invasion of Iraq, which is thought to have weapons of mass destruction. More than 4,000 Americans die in the war, but no W.M.D.s are found.

**2011**

**Libya**

The U.N. authorizes a no-fly zone and air strikes to protect civilians in the civil war. NATO strikes against the forces of Muammar el-Qaddafi help rebels defeat him.

**2013**

**Syria**

A chemical weapons attack in a Damascus suburb prompts President Obama to call for air strikes against the government of Bashar al-Assad (above).

**4 How has war changed in the last century and what effect has that had?**

When the Framers wrote the Constitution, the buildup to war took a long time, leaving plenty of opportunity for Congress and the president to weigh in without sacrificing any strategic advantage. “Those were the days of sailing ships, when it took several months for our enemies to set sail against us,” Wayne says.

Today, threats are immediate and responses swift. The U.S. can launch computer-guided missiles from aircraft carriers or submarines stationed hundreds of miles from the fighting.

In the past decade, drones have enabled the U.S. to strike against suspected terrorists in all kinds of lawless places where presidents can’t (or don’t want to) send troops. With drones, deadly airstrikes can be carried out anywhere in the world while the plane’s remote-control operator may be thousands of miles away, even in the U.S., and out of harm’s way.

The fact that the military can now do so much without actually putting “boots on the ground” makes a huge difference. If there are no American casualties, the public, and by extension Congress, are less likely to object.

“If you send in ground troops, that to me is the line between limited force and war,” says Bruce Jentleson, a public policy professor at Duke University. “If you’re putting lives at risk, Congress should be involved in that.”

**5 So why did President Obama go to Congress?**

The president seemed, in part, to be responding to the lack of support for a Syria attack from key allies like Great Britain, and at home: Americans are war-weary after a decade of fighting in Afghanistan and Iraq.

“There is nobody in my district who is so concerned about the well-being of people in Syria that they would prefer to see us spend billions of dollars on a missile attack against Syria than to spend exactly the same amount of money on schools or roads or health care,” says Congressman Alan Grayson, Democrat of Florida.

Some lawmakers have applauded the president for asking Congress to authorize a military strike. Others say doing so makes him—and the nation—look weak and indecisive.

“President Obama is abdicating his responsibility as commander-in-chief and undermining the authority of future presidents,” says Congressman Peter King, Republican of New York.

A deal brokered in September to force Syria to give up its chemical weapons has, for the time being, eliminated the need for a vote in Congress. But Secretary of State John Kerry says the U.S. remains prepared to strike if Syrian President Bashar al-Assad fails to allow the removal of his entire chemical arsenal.

“President Obama has made it clear,” Kerry said, “that to accomplish that, the threat of force remains.” ●

*With reporting by Stephen Erlanger of the New York Times.*