

## Is The Air Campaign Against Iran an Illegal Use of Force?

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Whenever the United States resorts to military force, the same question echoes through Washington and beyond: Did President Trump act within the law? Recent controversies surrounding the War Powers Resolution—especially the requirement to notify Congress—have only intensified that debate. This article steps aside from that familiar battleground. Instead, it asks a more fundamental constitutional question: would an air campaign against Iran be lawful under the United States Constitution? A careful reading suggests that the answer may well be yes.

There are two sections in Article I of the Constitution that address the authority to declare war. Clause 11 of Section 8 grants Congress the power to declare war, grant Letters of Marque and Reprisal, and make rules concerning capture on land and water. It is not the only provision that discusses war-making authority.

Clause 3 of Section 10, which is rarely mentioned in war powers discussions, deprives the states of the authority to maintain a standing army or navy, or to engage in war. It is the federal government's responsibility to provide for the nation's common defense, with two exceptions. First, Congress may permit states to possess these powers. Second, states may go to war if they are "actually invaded, or in such imminent danger as will not admit of delay."

### War Powers Act of 1973

Using general legislative authority, as well as power granted to it from Article I, Section 8, Congress passed the [War Powers Act](#) in 1973. The Act came after frustration over the Korean War and the bombing campaign over Cambodia during the Vietnam War.

The Act creates several limitations on the President's abilities to make war and requires: 1) a declaration of war, 2) specific statutory authorization, or 3) a national emergency created by an attack upon the United States, its territories or possessions, or its armed forces.

"In every possible instance," the President is required to consult with Congress prior to beginning hostilities and do so within 48 hours. Congressional approval is needed if hostilities are to continue beyond 60 days.

From a prescriptivist perspective, there are compelling arguments that certain provisions of the Act may be unconstitutional. While some argue that Congress cannot delegate its authority to make war, others argue that the Act infringes on the President's duties as Commander in Chief. Article I, Section 10, creates exceptional circumstances for the exercise of war-making powers. Moreover, there is a strong textual argument that those powers expressly granted to the states inherently apply to the President.

### Principles of Presidential War Powers

Using the two clauses of the Constitution referenced above, we can extract two principles regarding war-making authority: Consent of Congress and Imminent Danger.

## 1. Consent of Congress

Congress can consent in three ways. It can issue a formal declaration of war. It can also pass legislation to create conditions for the use of force. And it can give the Commander in Chief limited flexibility, as they did with the War Powers Act.

Alternatively, Congress can signal passive approval by not responding to the Presidential action at all. This last approach is controversial, but common sense and Supreme Court precedent suggest it is lawful. Moreover, Congress is the only body that can legally correct an unauthorized or undesired war. They can pass laws to restrict war-making authority, end a war, or use their impeachment power. When Congress chooses not to use these options, it is effectively granting passive consent.

## 2. Imminent Danger Exception

As stated in the preamble to the Constitution, the purpose of creating a constitution is to provide for the common defense of the people, among other goals. While Congress has the Article I power to declare war or legislate how the President can wage war, responsibilities are commingled. The President is the Commander in Chief per Article II, Section 2. One of the implied duties of heading the armed forces is directing them in a defensive attack or addressing imminent danger, which [refers](#) to an immediate threat that poses a risk of harm without prompt intervention. This is not a tangential power of the President, but a core constitutional power as well.

It would be ludicrous to suggest that the initial response to the War of 1812 was unauthorized because Congress could not meet to deliberate on a declaration. While it is clearly the primary duty of the federal government to repel invasion, it is also in the purview of the states to act when “actually invaded” or placed in “imminent danger.” The Founding Fathers clearly recognized the need for flexibility in responding to threats, especially in an era when communication delays were the norm. If the states are given such power in exceptional circumstances, certainly the Commander in Chief would have these powers.

What is peculiar is that the flexibility afforded to states is not restricted to times of invasion. An invasion is already an imminent danger. Neither is the exception in Section 10, Clause 3 restricted to actions on the sea for events such as intercepting a flotilla attempting to invade. It is easy to believe the Founders contemplated threats from their immediate borders with France, Britain, and Spain.

If a state had a border along a river, and an enemy nation started concentrating forces on the other bank of the river, one could argue the existence of imminent danger, especially in historic times where standing armies were statements in and of themselves.

## How This Applies to Iran

There is clearly some lawful justification for offensive use of force when Congress does not provide express consent. Just War Theory and the preemption doctrine can be discussed all day long until we are blue in the face, without concluding whether the current use of force is theoretically justified. The answer is truly a matter of prudence and congressional will.

Using threats of imminent danger as justification *seems* to be a stretch in this scenario, particularly because many in positions of authority [have hinted the imminence](#) originates with Israel's decision to carry out strikes and the retaliation that would bring upon American forces within the region.

One can argue that the intent of the imminent danger exception in the Constitution is limited to public defense. The War Powers Act considers imminent danger to military forces. Say that the military came across evidence of a nation trying to repeat a USS Cole-style bombing. Retaliating against that nation or striking first to reduce their capability would be the prudent thing to do, and it would be a lawful use of force under the Constitution alone, regardless of what acts of Congress say.

It is also important to consider the specific moment used to assess whether the actions are lawful. At the start of a conflict, one might not actually be in immediate danger or have given consent. Nevertheless, arguing imminent danger becomes easier in the chaos of war, especially after the first shot is fired.

It is unknown what the actual intelligence is behind the scenes, nor is it known the veracity of public comments by members of the Administration and Congress. Some say it is about nuclear weapon production, preempting retaliation that would stem from Israel's strikes against Iran, retaliation for the [alleged](#) killings of thousands of Iranian civilians, or regime change. Others who are just as authoritative contradict these claims.

While there may be classified intelligence to the contrary, this is a rare instance in which the justification for the strikes has not been communicated to the public. Normally, the public is aware of escalating tensions and seeing the President or other officials give warnings or make demands before we see strikes. On the evening of March 3, 2026, many members of Congress took to social media to discuss their briefing on the conflict. Representatives Seth Magaziner and Stephen Lynch, Senator Richard Blumenthal, among others, indicated that the administration failed to articulate any justification, while most [republicans stated support](#) for the strikes.

Just as there is a fog of war, there is a fog of politics. Commentary is often on partisan lines; it is an election year, and members often vote against public statements, and to the chagrin of public opinion. It is also common for members to offer support privately and behind the scenes while publicly posturing against matters. What matters is what Congress does as a body. Congress has not yet revoked the President's war-making ability. Until they do so, they are at least providing passive consent for the President to use force against Iran. While some may find the prudence of

this conflict distasteful, until Congress votes otherwise, the war and that the President's actions are lawful per the Constitution itself.

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