

IS IT WAR? A BETTER WAY

Professor Ph. D. James K. McCOLLUM

University of Alabama in Huntsville

Abstract

The United States has fought many wars during its 238 years of existence. The US Constitution prescribes that it is the US Congress that should issue a Declaration of War if the nation is going to take up arms against a foreign nation, but this prescription is not always observed and the President has put the nation at war in some recent struggles and they often end up badly. This leads to questions as to whether war should have been undertaken. Better ways to resolve conflicts should be found.

Keywords: Declaration of War, Enumerated Powers of Congress, Police Action Executive Order

Introduction

Taking a nation to war against other nations is one of the most serious decisions a government can take. In the United States Constitution of 1787, the American Founding Fathers established the national government in three branches: Legislative, Executive and Judicial, each with different “Enumerated Powers.” There have been times when one branch of the US government has tried to exercise the powers of another branch, an action that led to cases and controversies that had to be settled by the US Supreme Court. In some cases, the Supreme Court found valid reasons for the transfer of powers from one branch to another, but not always. For example, in the case *Touby v. United States*, 500 US 166 (1991), the Court decided against the transfer of power, to wit: “Congress may not delegate its legislative power to another branch of government.”

Often, the executive branch creates legislation by Executive Orders and too often the orders involve sending military forces into armed conflict against other nations without requesting a Declaration of War from the Congress. The US Constitution, chapter 1, clearly lists as an Enumerated Power to declare war to the Legislative Branch: “To Declare War, Grant letters of Marque and Reprisal, and make Rules concerning Captures of war prisoners on Land or Water.” The wars of the 20th Century bear witness that this delegation should be upheld for best results.

In the largest conflicts of the century, World War I and World War II, the President asked for and received declarations of war from the Congress and those wars were concluded with mostly satisfactory conclusions. In other wars where the executive directed US military forces into the conflicts without the declaration from Congress, the wars never reached satisfactory endings. The most salient examples were the “Police Action” in Korea ordered by President Harry Truman where 18,000 US service personnel lost their lives without a cessation of the conflict by a treaty or other legal conclusion and is still being maintained by large stranding US and South Korean forces. Similarly, the war in South Vietnam that was begun by the “Tonkin Gulf Resolution” declared by President Lyndon Johnson. In that war, 58,000 US service personnel lost

their lives and at the end in 1975, the country of South Vietnam ceased to exist, having been taken over by North Vietnam.

Some deductions may be made in these instances: when the Congress, the branch of the government closest to the people of the United States declares war, the war is conducted to a satisfactory conclusion. After World War I, the Allied forces established a peace that lasted more than twenty years. After World War II, American Constabulary forces, along with other allied forces, oversaw the transition of the main enemies: Germany, Japan, and Italy, into democratic, peace loving nations. This transition did not happen with North Korea, and after the conquest by North Vietnam in 1975, the single nation, Vietnam, became a communist nation.

Perhaps these analyses are over simplistic, but events of the 21st century seemed to leading to the similar conclusions. President Obama's decision to support rebel forces in Libya in 2010 without Congressional approval left a hostile force behind that attacked the American Consulate in Benghazi, Libya, and killed the US Ambassador to Libya along with 3 additional members of the US diplomatic mission. His decision to use American airstrikes in Iraq and Syria against ISIS forces without any Declaration of War from the Congress is likely to be a waste of funds and possibly of American lives. The findings in the news media show that some ISIS combatants are American citizens who have traveled to Syria. In our rendering of International Law, Americans who fight for a power that is at war with the United States lose their citizenship and would be incarcerated if they returned to the US Without the Declaration of War, they can return to the US and possibly create acts of sabotage against the US. This is another reason to get the Congress to approve putting American Military personnel into conflicts with other nations.

Ideally, all nations should settle their difference at diplomatic tables and negotiate settlements without recourse to violence. Wars always bring tragic consequences of death and severe wounds to participants on all sides which makes a clear conclusion that no nation wins by engaging in armed conflict. The United Nations was created in 1946 to provide means to avoid armed conflicts. The U.N. has been successful in negating conflicts by getting the parties to negotiate in some conflicts, but more often, tragic wars are waged with great loss of life and property from which the combatting countries never recover.

A Need for Rational Conflict Settlement.

All seven billion people on planet earth have the same needs: for food, clothing, housing, education, medical care, safety from adverse weather etc. Some nations are better organized to provide these needs than others and this often causes jealousy and resentment. We have diverse religions and cultures that hate each other for differences that are held for centuries and result in armed conflict touched off by accidents or incidents that should be settled by diplomacy.

Could a large Body of Scholars be created to evaluate ways to avoid armed conflicts? The United Nations was created with this in mind, but its Security Council and General Assembly have evolved into factions that are divided and are more interested in "winning" for their ideology, ethnic group, or religion than for peacefully settling the problems that occur. If the Body of Scholars representing all religions, ethnic groups, and economic groups were formed and given the task of investigating and debating causes of

conflicts, with the power to render decisions that would peacefully settle conflicts before they resort to armed conflict, it would save many lives and prevent wounded bodies. We have that kind of organization for economic conflicts in the World Trade Organization. Would it be possible to have such a body to make decisions that occur due to border disputes, political disputes, religious disputes, and any other disputes that could lead to armed conflict?

Bibliography:

1. Karnow, Stanley, (1983), *Vietnam, A History: Vietnam at War*, New York: The Viking Press.
2. Knox, Donald, (1985), *The Korean War: Pusan to Chosin*, New York: Harcourt Brace.
3. Matloff, Maurice, ed, ((1969), *American Military History*, Washing ton D.C. US Army Military History Office.
4. McCollum, James K. (1976), *Unity of Effort, Cohesiveness, Flexibility: Military Contributions to Organization Theory*, Military Review LVI, (March).
5. Stamps, Dodson & Esposito, Vincent, eds. (1954), *A Short History of World War I*, West Point: US Military Academy Press.