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“The Congress shall have Power .../... To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water – U.S Constitution, Article I, Sec. 8, ¶ 11”

## ***Congressional Abdication***

by **Jim Webb**

An extract from "Congressional Abdication", first published in the Mar/Apr 2013 edition of *The National Interest*.

In a world filled with cruelty, the question is not only how but whether a president should be allowed to pick and choose when and where to use military force on the basis of such a vague standard [for humanitarian intervention]. Given our system of government, the fundamental question is: Who should decide? And even if a president should decide unilaterally on the basis of an overwhelming, vital national interest that requires immediate action, how long should that decision be honored, and to what lengths should our military go, before the matter comes under the proper scrutiny—and boundaries—of Congress?

As a measure for evaluating future crises, it is useful to review the bidding that led to our actions in Libya. What did it look like when President Obama ordered our military into action in that country, and what has happened since?

Was our country under attack, or under the threat of imminent attack? No. Was a clearly vital national interest at stake? No. Were we invoking the inherent right of self-defense as outlined in the UN Charter? No. Were we called upon by treaty commitments to come to the aid of an ally? No. Were we responding in kind to an attack on our forces elsewhere, as we did in the 1986 raids in Libya after American soldiers had been killed in a Berlin disco? No. Were we rescuing Americans in distress, as we did in Grenada in 1983? No.

The president followed no clear historical standard when he unilaterally decided to use force in Libya. Once this action continued beyond his original definition of “days, not weeks,” into months and months, he did not seek the approval of Congress to continue military activities. And, while administration members may have discussed this matter with some members of Congress, the administration never formally conferred with the legislative branch as a coequal partner in our constitutional system.

Obviously, these points are not raised out of any lasting love for the late Libyan leader Muammar el-Qaddafi. But this is not about Qaddafi; it is about the manner in which our nation decides to use lethal military force abroad. This is a region rife with tribalism, fierce loyalties and brutal retaliation. Libya represented the extreme (at least so far) of executive action in the absence of the approval of Congress.

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We took military action against a regime that we continued to recognize diplomatically, on behalf of disparate groups of opposing forces whose only real point of agreement was that they wished to rid Libya of Qaddafi. This was not even a civil war. As then secretary of defense Robert Gates put it to this writer during a Senate Armed Services Committee hearing, it is not a civil war when there is no cohesive opposition facing a regime.

The too frequently ignored end result of this process was not only the rampant lawlessness that possibly contributed to the assassination of our ambassador and three other U.S. officials, but also the region-wide dispersion of thousands of weapons from Qaddafi's armories.

The inaction (some of it deliberate) of key congressional leaders during this period has ensured that the president's actions now constitute a troubling precedent. Under the objectively indefinable rubric of "humanitarian intervention," President Obama has arguably established the authority of the president to intervene militarily virtually anywhere without the consent or the approval of Congress, at his own discretion and for as long as he wishes.

It is not hyperbole to say that the president himself can now bomb a country with which we maintain diplomatic relations, in support of loosely aligned opposition groups that do not represent any coalition that we actually recognize as an alternative. We know he can do it because he already has done it.

Few leaders in the legislative branch even asked for a formal debate over this exercise of unilateral presidential power, and in the Senate any legislation pertaining to the issue was prevented from reaching the floor. One can only wonder at what point these leaders or their successors might believe it is their constitutional duty to counter unchecked executive power exercised on behalf of overseas military action.

At bottom, what we have witnessed in these instances, as with many others, is a breakdown of our constitutional process. Opinions will surely vary as to the merits of the actual solution that was reached in each case, but this sort of disagreement, which in and of itself forms the basis of our form of government, is the precise reason why each one of these cases, and others, should have been properly debated and voted on by Congress. In none of these situations was the consideration of time or emergency so great as to have precluded congressional deliberation. In each, we can be certain that Congress was deliberately ignored or successfully circumvented, while being viewed by some members of the executive branch as more of a nuisance than an equal constitutional partner. And there is no doubt that some key congressional leaders were reluctant, at best, to assert the authority that forms the basis of our governmental structure.

When it comes to the long-term commitments that our country makes in the international arena, ours can be a complicated and sometimes frustrating process. But our Founding Fathers deliberately placed checks and counterchecks into our constitutional system for exactly that purpose. The congressional "nuisance factor" is supposed to act as a valuable tool to ensure that our leaders—and especially our commander in chief—do not succumb to the emotions of the

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moment or the persuasions of a very few. One hopes Congress—both Republicans and Democrats—can regain the wisdom to reassert the authority that was so wisely given to it so many years ago.

And as for the presidency, a final thought is worth pondering. From a political standpoint, it is far smarter to seek congressional approval on controversial matters of foreign policy, as was done in the October 2002 authorization to invade Iraq, than to attempt to circumvent the legislative branch. At home, Congress and the presidency will then share accountability. Abroad, the international community will know that America is united and not acting merely at the discretion of one individual.

Jim Webb is an author, former-U.S. Senator, Secretary of the Navy and heavily decorated Marine.

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