The Presidential Power to Make War

The President, Congress, and the Balance of Power
The Constitution

Article I, Section 8

Congress shall have the power to...

- To declare war;
- To raise and support armies
- To provide and maintain a navy;
- To oversee the rules for the military;
- To provide for calling forth the militia to...suppress insurrections and repel invasions;
- To provide for organizing, arming, and disciplining, and governing the militia
The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States
Yesterday, December 7, 1941 - a date which will live in infamy - the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan.

...As Commander-in-Chief of the Army and Navy I have directed that all measures be taken for our defense, that always will our whole nation remember the character of the onslaught against us.

...I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make it very certain that this form of treachery shall never again endanger us.

...I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese Empire.

President Franklin D. Roosevelt
War Message to Congress
JOINT RESOLUTION Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same.

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America:

Therefore be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Congressional Declaration of War
House 388-1
Senate 82-0
Last night I announced to the American people that the North Vietnamese regime had conducted further deliberate attacks against U.S. naval vessels operating in international waters....

After consultation with the leaders of both parties in the Congress, I further announced a decision to ask the Congress for a resolution expressing the unity and determination of the United States in supporting freedom and in protecting peace in southeast Asia.

As President of the United States I have concluded that I should now ask the Congress, on its part, to join in affirming the national determination that all such attacks will be met, and that the United States will continue in its basic policy of assisting the free nations of the area to defend their freedom.

As I have repeatedly made clear, the United States intends no rashness, and seeks no wider war. We must make it clear to all that the United States is united in its determination to bring about the end of Communist subversion and aggression in the area. We seek the full and effective restoration of the international agreements signed in Geneva in 1954, with respect to South Vietnam, and again in Geneva in 1962, with respect to Laos...

President Lyndon B. Johnson
Statement on the Gulf of Tonkin Incident
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

…the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

…This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Gulf of Tonkin Resolution
House 416-0
Senate 88-2
The War Powers Resolution

- November 7, 1973 – in response to President Nixon’s secret bombing and subsequent invasion of Cambodia and the wider war in Vietnam

- The president shall “in every possible instance” consult with Congress before committing troops to hostilities and consult regularly after

- Requires presidential notification of Congress within 48 hours of committing forces to hostile situations overseas

- The president is required to bring troops home within 60-90 days unless Congress approves more time
It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

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.

War Powers Resolution
I know Members of Congress agree that Saddam Hussein's regime is still a threat to peace, as it was when you passed the Iraq Liberation Act of 1998. I also know members of the United Nations are angry that this regime continues to thumb its nose at the world, defying at least 16 U.N. Security Council resolutions adopted between 1990 and 1999 that require Iraq to disarm and give up weapons of mass destruction, to stop threatening its neighbors and to stop oppressing the Iraqi people. America intends to lead the way to make certain that the Saddam Hussein regime is not able to threaten anyone in the world with the world's most devastating weapons.

Doing nothing in the face of a grave threat to the world is not an option. At an appropriate time and after consultations with the leadership, I will seek congressional support for U.S. action to do whatever is necessary to deal with the threat posed by Saddam Hussein's regime. The Congress can play an important role in building a national consensus for action.

My Administration remains committed to the regime change policy enshrined in the Iraq Liberation Act. The world must address how the Iraqi people can be liberated from the bondage in which the regime holds them and realize a better future for their children.

President George W. Bush
Letter to Speaker Dennis Hastert
This joint resolution may be cited as the `Authorization for Use of Military Force Against Iraq Resolution of 2002'.

...The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to-- (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

...In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination

...Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.
What other constitutional powers does Congress possess that can limit the president’s war-making ability?

- Passing laws
- Controlling appropriations (funding)
- Confirmation of nominees
- Impeachment
- Treaty ratification
- Hearings and investigations
Have the lines between the president's role as commander-in-chief and Congress's power to declare war been blurred?

Is the president too able to commit American troops to conflict without congressional approval or oversight?

Is the War Powers Resolution effective or even constitutional?

How do the president’s war-making powers and congressional oversight like the War Powers Resolution illustrate the concept of checks and balances?

How might a divided government make this issue more contentious?