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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Ms. FOXX).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
March 31, 2011.

I hereby appoint the Honorable VIRGINIA FOXX to act as Speaker pro tempore on this day.

JOHN A. BOEHNER,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 5, 2011, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes each, but in no event shall debate continue beyond 11:50 a.m.

THE ATTACK ON LIBYA

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. MCCLINTOCK) for 5 minutes.

Mr. MCCLINTOCK. Madam Speaker, when the President ordered the attack on Libya without congressional authorization, he crossed a very bright constitutional line that he, himself, recognized in 2007 when he told the Boston Globe, "The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the Nation."

The reason the American Founders reserved the question of war to the Congress was that they wanted to assure that so momentous a decision could not be made by a single individual. They had watched European kings plunge their nations into bloody and debilitating wars over centuries, and they wanted to avoid that terrible fate for the American Republic.

The most fatal and consequential decision a Nation can make is to go to war, and the American Founders wanted that decision made by all the representatives of the people after careful deliberation. Only when Congress has made that fateful decision does it fall to the President as Commander in Chief to command our Armed Forces in that war.

The authors of the Constitution were explicit on this point. In Federalist 69, Alexander Hamilton drew a sharp distinction between the American President's authority as Commander in Chief, which he said "would amount to nothing more than the supreme command and direction of the military and naval forces" and that of the British king who could actually declare war.

To contend that the President has the legal authority to commit an act of war without congressional approval requires ignoring every word the Constitution's authors said on this subject—and they said quite a lot.

There seems to be a widespread misconception that under the War Powers Act the President may order any attack on any country he wants for 60 days without congressional approval. That is completely false.

The War Powers Act is clear and unambiguous: The President may only order our Armed Forces into hostilities under three very specific conditions. Quoting directly from the act: "One, a declaration of war; two, specific statutory authorization; or, three, a national emergency created by attack upon the United States, its territories or possessions, or its Armed Forces."

Only if one of these conditions is present can the President then invoke the War Powers Act. None are present, none are alleged to have been present, and, thus, the President is in direct violation of that act.

The United Nations Participation Act requires specific congressional authorization before American forces are ordered into hostilities in United Nations actions. The North Atlantic Treaty clearly requires troops under NATO command to be deployed in accordance with their own country's constitutional provisions. The War Powers Act specifically forbids inferring from any treaty the power to order American forces into hostilities without specific congressional authorization.

The only conclusion we can make is that this was an illegal and unconstitutional act of the highest significance.

The President has implied that he didn't have the time for congressional authorization to avert a humanitarian disaster in Libya. Well, he had plenty of time to get a resolution from the United Nations, and I would remind him that just a day after the unprovoked bombing of Pearl Harbor, Franklin Roosevelt appeared in this very Chamber to request and receive congressional authorization.

Some have said that the President can do whatever he wishes and that Congress' authority is limited to cutting off funds. The war is not a one-sided act that can be turned on and off with congressional funding. Once any Nation commits an act of war against another, from that moment on it is at war. It is inextricably embroiled and entangled with an aggrieved and belligerent party that has casus belli to prosecute hostilities regardless of what Congress then decides.

Finally, I've heard it said, well, we did the same thing in Kosovo. If that is the case, then shame on the Congress that tolerated it, and shame on us if we allow this act to stand unchallenged any longer.

This symbol represents the time of day during the House proceedings, e.g., 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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