



NEWPORT PAPERS

A Series of Point Papers
from the Naval War College and the
Navy Warfare Development Command
For Senior Leadership
In Response to Critical Issues

Strategy / CONOPS / Doctrine / Decision

United States Naval War College
Navy Warfare Development Command
Newport, Rhode Island

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**TERROR WAR:
IS A FORMAL "DECLARATION OF WAR" NEEDED?**

Purpose: To examine whether a declaration of war is necessary to combat international terrorism and those states that support it.

Background: There have been five U.S. declarations of war (War of 1812, Mexican War, Spanish American War, World War I, and World War II). The United States has not declared war since 1941. That said, the United States has engaged in small and large scale wars many times since 1945, including the Korean, Vietnam, and Gulf Wars. In each post-World War II situation, U.S. military and naval forces have engaged in combat with an enemy without Congress having declared war. In each case, however, Congress necessarily "approved" these wars, usually, but not always, by Joint Resolution.

A declaration of war announces that the legal state of war exists between states. It is not legally relevant between non-state actors. In all the armed conflicts of the last 50 years, the United States and others have not suffered operationally as a result of not being in a legal state of war, and there is no reason to believe that the present conflict will be different in this respect.

Discussion: The United Nations Charter disfavors declarations of war, and the operative paragraphs of the Charter do not use the word "war." Under the Charter, which is the fundamental document for world order, the international use of force is permitted in individual or collective self-defense (an "inherent right," predating the Charter, in the language of Article 51), pursuant to Security Council resolutions.

A declaration of war in the present situation could simplify the task and cut through the political underbrush. Certainly, a declaration of war (by Congress, typically, through Joint Resolution) would give the United States at least three benefits. First, a declaration would allow the President to use wide-ranging authorities to control and affect most areas of national life. More than 100 existing statutes contain provisions triggered by a declaration of war. These range from permitting the President to seize industries and other private property critical to the war effort to allowing the Executive Branch to exceed budgetary constraints imposed by the Congress. Second, declaring war would arguably strengthen our national will by focusing the mental energies of the American public on the struggle against terrorism. If the "will of the American people" is our strategic center of gravity in the new terror war, then a course of action that strengthens that center is of great benefit. Third, as the United States has not declared war for more than 50 years, our friends and allies, both at home and abroad, would view a declaration of war as proof that the United States is fully committed to winning the terror war.

On the other hand, there are equally good reasons not to seek a declaration of war. For example, President George H.W. Bush declined to seek a declaration of war for DESERT STORM because he did not see a need for emergency powers, and he did not want to provide support for Iraq's claim that it was fighting the United States, not the world. Additionally, President Bush did not need a declaration of war from a constitutional perspective. As in the present case, Congress approved a Joint Resolution authorizing the President to use force against Iraq. Assuming that the terror war will not require military operations exceeding the scope of DESERT STORM, the Joint Resolution of September 18, 2001, like the Joint Resolution of January 1991, gives the President all necessary constitutional authority to use force. It follows that declaring war would give the President more power than he needs. Viewed from this perspective, Congress might hesitate to approve a request to declare war because such an action would be an unnecessary shift in the balance of power between the Executive and the Congress.

Additionally, a declaration of war might make it more difficult to build a coalition against terrorist organizations and the states that harbor and use them. For domestic political reasons, potential allies or coalition partners might be uneasy about allying themselves with a nation in a legal state of war. A declaration of war may well divert attention from the attacks on the United States to debate about the appropriateness of the U.S. response and discourage countries from joining an anti-terrorist coalition. There is in fact no way to simplify the complex political context of the campaign against terrorists and countries that use them by formally declaring war. Thus, a declaration of war would not succeed in stopping countries from trying to interfere with a U.S. exercise of belligerent rights if they were inclined to do so; and if they are not inclined to interfere, there is no need to test the limits of their tolerance with a declaration of war. A declaration of war is not necessary as a U.S. constitutional matter for the United States to use force against terrorists and the states that use them as weapons or harbor them.

Recommendation/Action: Policy makers should carefully weigh the advantages and disadvantages of formally declaring war in the present circumstances. At this time, it is not clear that the President needs a declaration of war to use America's armed forces in the terror war. If, as the war unfolds, however, states continue to defy the international consensus to destroy terrorism, then a declaration of war against those specific states could be examined as a possible course of action.