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Congress of the United States
House of Representatives
Washington, DC 20515-0504

COMMITTEE ON
NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER
CHAIRMAN
SUBCOMMITTEE ON PUBLIC LANDS
AND ENVIRONMENTAL REGULATION
COMMITTEE ON THE BUDGET

August 28, 2013

The Honorable John Boehner
Speaker of the House
H-232 The Capitol
Washington D.C. 20515

Dear Mr. Speaker:

As you know, the Constitution clearly and unmistakably vests Congress with the sole prerogative “to declare war.” I am unaware of any act of Congress that has done so with respect to Syria.

Although I appreciate your call for “consultations” with Congress before an act of war is ordered by the President, under the War Powers Resolution, this is sufficient only in three limited circumstances: “(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.” **Unless one of these conditions is present, the decision must be made by Congress and not by the President.**

Nor does our participation in NATO allow the President to order an unprovoked act of war. The North Atlantic Treaty clearly requires troops under NATO command to be deployed in accordance with their country’s constitutional provisions. The War Powers Resolution clearly and unmistakably states that the President’s power to engage United States Armed Forces in hostilities “shall not be inferred ... from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities...”

Nor does the United Nations Participation Act of 1945 authorize the President to commit U.S. Armed Forces to combat in pursuit of United Nations directives without congressional approval.

The authors of the Constitution were explicit on this point. Madison said, “In no part of the Constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department... ..Those who are to conduct a war cannot in the nature of things, be proper or safe judges whether a war ought to be commenced, continued, or concluded.”

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.

Indeed, it is reported that the British Prime Minister has called Parliament into special session to consider the question. How ironic it would be if the British government was to act with the authorization of Parliament but the American government acted on the unilateral decision of one man.

I cannot put this too strongly: **it is absolutely imperative, as Speaker of the House, that you make a clear and unequivocal public statement asserting Congress’ sole constitutional prerogative to authorize a military attack, that the House is prepared to return to consider such a request, and that you make this statement before events overtake us.** 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 it is at war -- inextricably embroiled and entangled with an aggrieved and belligerent government and its allies that have casus belli to prosecute hostilities regardless of what Congress then decides.

If there are facts that compel us to take such a course, let those facts be laid before Congress and let Congress fulfill its rightful constitutional role on the most momentous decision any government may make.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom McClintock". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Tom McClintock