

# Illegal, unilateral, preemptive military action against Iran: Chairman of House Judicial Committee Speaks Out

By [John Conyers](#)

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From: The office of House Judiciary Chairman John Conyers, Jr.

May 8, 2008

Join Me in Calling on President Bush to Respect Congress' Exclusive Power to Declare War

Dear Democratic Colleague:

As we mark five years of war in Iraq, I have become increasingly concerned that the President may possibly take unilateral, preemptive military action against Iran. During the last seven years, the Bush Administration has exercised unprecedented assertions of Executive Branch power and shown an unparalleled aversion to the checks and balances put in place by the Constitution's framers. The letter that follows asks President Bush to seek congressional authorization before launching any possible military strike against Iran and affirms Senator Biden's statement last year that impeachment proceedings should be considered if the President fails to do so.

I hope that you will join me in calling on the President to respect Congress' exclusive power to declare war. To sign the letter below, please contact the Judiciary Committee staff at 225-3951.

Sincerely,  
John Conyers, Jr.  
Chairman

May 8, 2008

The Honorable George W. Bush  
President of the United States  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. President:

We are writing to register our strong opposition to possible unilateral, preemptive military action against other nations by the Executive Branch without Congressional authorization. As you know, Article I, Section 8 of the U.S. Constitution grants Congress the power "to

declare war,” to lay and collect taxes to “provide for the common defense” and general welfare of the United States, to “raise and support armies,” to “provide and maintain a navy,” to “make rules for the regulation for the land and naval forces,” to “provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions,” to “provide for organizing, arming, and disciplining, the militia,” and to “make all laws necessary and proper for carrying into execution ... all ... powers vested by this Constitution in the Government of the United States.” Congress is also given exclusive power over the purse. The Constitution says, “No money shall be drawn from the Treasury but in consequence of appropriations made by law.”

By contrast, the sole war powers granted to the Executive Branch through the President can be found in Article II, Section 2, which states, “The President shall be the Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States.” Nothing in the history of the “Commander-in-Chief” clause suggests that the authors of the provision intended it to grant the Executive Branch the authority to engage U.S. forces in military action whenever and wherever it sees fit without any prior authorization from Congress. In our view, the founders of our country intended this power to allow the President to repel sudden attacks and immediate threats, not to unilaterally launch, without congressional approval, preemptive military actions against foreign countries. As former Republican Representative Mickey Edwards recently wrote, “[t]he decision to go to war ... is the single most difficult choice any public official can be called upon to make. That is precisely why the nation’s Founders, aware of the deadly wars of Europe, deliberately withheld from the executive branch the power to engage in war unless such action was expressly approved by the people themselves, through their representatives in Congress.” [1]

Members of Congress, including the signatories of this letter, have previously expressed concern about this issue. On April 25, 2006, sixty-two Members of Congress joined in a bipartisan letter that called on you to seek congressional approval before making any preemptive military strikes against Iran. [2] Fifty-seven Members of Congress have co-sponsored H. Con. Res. 33, which expresses the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress. [3]

Our concerns in this area have been heightened by more recent events. The resignation in mid-March of Admiral William J. “Fox” Fallon from the head of U.S. Central Command, which was reportedly linked to a magazine article that portrayed him as the only person who might stop your Administration from waging preemptive war against Iran, [4] has renewed widespread concerns that your Administration is unilaterally planning for military action against that country. This is despite the fact that the December 2007 National Intelligence Estimate concluded that Iran had halted its nuclear weapons program in the fall of 2003, a stark reversal of previous Administration assessments. [5]

As we and others have continued to review troubling legal memoranda and other materials from your Administration asserting the power of the President to take unilateral action, moreover, our concerns have increased still further. For example, although federal law is clear that proceeding under the Foreign Intelligence Surveillance Act (FISA) “shall be the exclusive means by which electronic surveillance” can be conducted within the U.S. for foreign intelligence purposes, 18 U.S.C. 2511(2)(f), the Justice Department has asserted that the National Security Agency’s warrantless wiretapping in violation of FISA is “supported by

the President's well-recognized inherent constitutional authority as Commander in Chief and sole organ for the Nation in foreign affairs". [6] As one legal expert has explained, your Administration's "preventive paradigm" has asserted "unchecked unilateral power" by the Executive Branch and violated "universal prohibitions on torture, disappearance, and the like." [7]

Late last year, Senator Joseph Biden stated unequivocally that "the president has no authority to unilaterally attack Iran, and if he does, as Foreign Relations Committee chairman, I will move to impeach" the president. [8]

We agree with Senator Biden, and it is our view that if you do not obtain the constitutionally required congressional authorization before launching preemptive military strikes against Iran or any other nation, impeachment proceedings should be pursued. Because of these concerns, we request the opportunity to meet with you as soon as possible to discuss these matters. As we have recently marked the fifth year since the invasion of Iraq, and the grim milestone of 4,000 U.S. deaths in Iraq, your Administration should not unilaterally involve this country in yet another military conflict that promises high costs to American blood and treasure.

Sincerely,  
John Conyers, Jr.  
Chairman

[1] Mickey Edwards, Dick Cheney's Error, Wash. Post, March 22, 2008, at A13.

[2] Letter from Rep. Peter DeFazio, Rep. John Conyers, Jr., and 60 other Members of Congress, to President George W. Bush (Apr. 25, 2006) (on file with the Committee on the Judiciary).

[3] H. Con. Res. 33, 110th Cong. (2008)

[4] Thomas E. Ricks, Top U.S. Officer in Mideast Resigns, Wash. Post, March 12, 2008, at A1.

[5] Dafna Linzer and Joby Warrick, U.S. Finds That Iran Halted Nuclear Arms Bid in 2003, Wash. Post, Dec. 4, 2007, at A1.

[6] Department of Justice, Legal Authorities Supporting the Activities of the National Security Agency Described by the President, Jan. 19, 2006 at 1.

[7] David Cole, Less Safe, Less Free: Why America is Losing the War on Terror, 2007 at 2.

[8] Adam Leach, Biden: Impeachment if Bush Bombs Iran, PORTSMOUTH HERALD, Nov. 29, 2007.

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