

“The toxic legacy of the Korean War” - *The conflict upended the constitutional balance. It has been cited by presidents ever since.*

- Mary L. Dudziak - The Washington Post 2019

The collapse of talks between President Trump and North Korean leader Kim Jung Un in Hanoi means that Pyongyang’s nuclear program will continue — and so, too, will the still unresolved Korean War, now nearly 70 years old.

The war, which ended with a truce but not a peace treaty, is famously forgotten in the United States, but it is invoked as legal authority every time a president sends U.S. troops overseas without congressional authorization.

The war was the first large overseas U.S. conflict without a declaration of war, setting a precedent for the unilateral presidential power exercised today. The Korean War has helped to enable this century’s forever wars. A peace deal, which Trump has talked of reaching, would not undo this forgotten legacy, but renewed American attention to the Korean War should be an occasion to rethink the president’s war powers.

Trump’s Office of Legal Counsel drew upon the Korean War precedent as authority after he ordered targeted military strikes on an air base in Syria from which the Syrian regime had launched chemical weapons on its own people in 2017 and 2018. In 2011, President Barack Obama also relied on the Korea precedent when, without congressional authorization, he ordered airstrikes in Libya in an effort to prevent civilian deaths by the government of Moammar Gaddafi. Similarly, it was authority for President George W. Bush when — again without congressional authorization — he sent Marines to Haiti for the purpose of peacekeeping and humanitarian assistance.

In late June 1950, American leaders were caught by surprise when North Korean forces invaded South Korea, a country established after World War II with United Nations and U.S. support. The administration of Harry S. Truman believed North Korean action was directed by the Soviet Union. Decades later, Soviet archives would show that North Korea pushed the Soviets to go along, but Truman and his advisers saw the invasion as a possible template for Soviet military action elsewhere in the world. They believed they needed to act quickly and forcefully. On the evening of June 24, when news of the crisis first trickled into Washington, Dean Rusk, assistant secretary of state for Far Eastern affairs, and others rushed to the State Department and began planning to bring the issue before the U.N. Security Council.

That “was just automatic,” John D. Hickerson, assistant secretary for U.N. affairs, remembered, not something they debated. Truman agreed to this.

The council required convincing, however. The United Kingdom cautioned against going “beyond the bounds of the evidence,” and some members questioned whether the conflict was a civil war, which the U.N. should stay out of, rather than an act of aggression. Consequently, a resolution passed on June 25 was limited, and it was too early to contemplate the use of force. It called upon North Korea to cease hostilities and withdraw, and asked member states to render assistance. The Soviet Union was absent and unable to use its veto. Over the next two days, conditions in on the Korean Peninsula deteriorated. Lacking weapons that could stop the Soviet tanks used by North Korean forces, the South Korean army could not hold the line. The capital city of Seoul quickly fell. North Korean soldiers pushed south, and hundreds of thousands of civilians became refugees. The war looked like a rout.



The Truman administration again turned to the U.N. Security Council. On June 27, it passed a resolution calling upon member states to assist South Korea in repelling the North Korean attack. It was a historic moment: the first time the U.N. Security Council had authorized the use of force.

The council resolution provided international authority, but the U.S. Constitution required more: authorization from Congress. Within the first 24 hours, members of Congress raised concerns about whether Korea was a civil war and whether the president intended to use American ground troops. The president conferred with selected lawmakers but not Congress as a whole.

On the evening of June 26, after meeting with military and State Department advisers, Truman authorized the Navy and Air Force to offer "fullest possible support" to South Korea below the 38th parallel that divided the North and the South. Military targets were "cleared for attack." This was the night before the U.N. Security Council Resolution authorizing force was approved.

Truman aide George Elsey, who closely recorded the events, recalled that June 27 would have been the right time to seek a war resolution, "but apparently nobody thought of it at that time." They were "too busy thinking of military action and United Nations action to try to cover up their tracks with congressional resolutions." In other words, the administration took a tremendously consequential step — launching a major military action while ignoring the authority of Congress to declare war — without actually thinking about it.

As time went on, Secretary of State Dean Acheson urged the president to seek a resolution to respond to criticism. Truman was reluctant. By early July, it seemed improbable that he could get the near-unanimous vote he would have liked. But a war resolution required only a simple majority. Truman viewed Congress as a political stumbling block, rather than his constitutional partner charged with the authority to declare war.

Truman declined to address Congress until three weeks after the invasion out of concern that it would appear he was asking for a war declaration. He insisted, oddly, that it was not up to him, but to Congress, to propose a war resolution.

To justify this, Truman refused to call Korea a war. Instead it was a "police action." Conditions on the ground belied this ruse.

The first U.S. ground troops deployed to the Korean Peninsula met with disaster. Underequipped and outmanned, they were ultimately forced to flee, abandoning their dead and scores of injured. Napalm was used extensively but sometimes fell on U.S. and U.N. troops, burning them to death. With no quick victory, the war lasted through brutally cold winters — one of the most common war injuries was amputation resulting from frostbite. American families waited at home, often without word. "Do you have a son in Korea, outnumbered 10 to 1?" a father asked Taft.



The war's greatest burdens fell on Korean civilians. Millions perished. Many were killed by U.S. and U.N. aerial bombing, which particularly decimated the North. There was so much carnage that some refugees returning home in the aftermath could not avoid walking over bodies in the forest.

The fighting ended with an armistice signed by North Korea and the United Nations in 1953. In the years that followed, Democratic and Republican administrations crafted a defence of presidential unilateralism in opinions by the Office of Legal Counsel, sometimes in secret. The conflict in Korea showed that it was "deeply rooted historical practice" to send troops to war without congressional authorization, according to the Office of Legal Counsel opinion that gave Trump a green light in Syria. In addition, starting with Korea, supporting U.N. action counted as a national interest the president could protect militarily.