



Written by [Jack Kenny](#) on March 9, 2012

Obama Adm. Will Seek “International Permission” for Going to War

"We're worried about international legal basis, but no one's worried about the fundamental constitutional legal basis that this Congress has over war," Sessions protested. Referring to the last year's bombing raids by the United States and United Nations allies in Libya, Sessions said: "We were not asked, stunningly, in direct violation of the War Powers Act, whether or not you believe it's constitutional, [the Libyan raids] certainly didn't comply with it. We spent our time worrying about the UN, the Arab League, NATO, and too little time worrying about the elected representatives of the United States," Sessions said. "Do you think you can act without Congress and initiate a No Fly Zone in Syria, without congressional approval?" he asked Panetta.



"Again, our goal would be to seek international permission and we would come to the Congress and inform you and determine how best to approach this," Panetta replied. "Whether or not we would want to get permission from the Congress, I think those are issues I think we would have to discuss as we decide what to do here." Sessions made it clear he was not pleased with what he heard.

"Well, I'm almost breathless about that," the Alabama lawmaker replied. "Because what I heard you say is, we are going to seek international approval and then we'll come and tell the Congress what we might do, and we might seek Congressional approval. I want to say to you, that's a big deal, wouldn't you agree? You served in the Congress," he reminded Panetta, a U.S. representative from California from 1977-1993. "Wouldn't you agree that would be pretty breathtaking for the average American? So would you like to clarify that?"

"I've also served with Republican Presidents and Democratic Presidents who have always reserved the right to defend this country if necessary," replied the former CIA director, who succeeded Robert Gates as Defense Secretary in 2011. Panetta did not explain how last year's bombing in Libya was, or a potential military intervention in Syria might be, a defense of the United States.

"But before you do this you would seek permission of the international authorities?" Sessions asked.

"If we are working with an international coalition and we're working with NATO we would want to be able to get appropriate permissions in order to be able to do that. That's something that all of these countries would want to have — some kind of legal basis on which to act."

"What kind of legal basis are you looking for? What entity?" asked Sessions.

"If NATO made the decision to go in, that would be one," said Panetta. "If we developed an international coalition beyond NATO then some kind of U.N. Security Resolution..."



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"So you are saying NATO would give you a legal basis ... and an ad hoc coalition of the United Nations would provide a legal basis?" Sessions asked. "Well who are you asking for the legal basis from?"

"If the UN passed a Security Resolution as it did with Libya, we would do that," the Defense Secretary answered. "If NATO came together as it did in Bosnia, we would rely on that, so we have options here if we want to build the kind of international approach dealing with the situation."

"I'm all for having international support," Sessions conceded, "but I'm really baffled by the idea that somehow an international assembly provides a legal basis for the United States military to be deployed in combat. I don't believe it is close to being correct. They provide no legal authority. The only legal authority that is required to deploy the United States military is the Congress and the President and the law and the Constitution." Panetta's response was interesting more for what it did not say than for what he said.

"Let me for the record be clear again," he replied. "When it comes to the national defense of this country, the President of the United States has the authority under the Constitution to act to defend this country and we will." The Secretary neatly sidestepped the Senator's point about the power and responsibility of Congress under the Constitution to decide whether and when to wage war. Panetta's response suggests the President can unilaterally commit the nation to war, even in the absence of an actual or imminent attack upon the United States. That runs counter to both the text and history of the Constitution, which names the President as commander in chief of the armed forces, but delegates to Congress the power to declare war. According to Madison's notes at the Constitutional Convention, the word "declare" was substituted for wording giving Congress the power to "make war," because the delegates did not want to deny to the President the duty and power to use military force to repel a sudden attack. Had the intention been merely to give Congress the role of announcing to the world that the President has decided to attack another country, that role could hardly be considered among the "powers" delegated to the Congress. It would more resemble a task for the President's press secretary.

The War Powers Resolution referenced by Sessions was passed by Congress in 1973 after President Nixon had been waging secret wars in Laos and Cambodia. It forbids sending U.S. forces into military action abroad without authorization of Congress except in case of "a national emergency created by an attack on the United States, its territories or possessions or its armed forces." It further requires the President to notify the Congress within 48 hours of deploying troops in such an emergency and requires the troops to be removed within 60 to 90 days of their deployment unless there is an authorization of the use of military force or declaration of war by Congress. The joint resolution was passed by a two-thirds vote of Congress over President Nixon's veto and has been ignored ever since, most notably during President Clinton's bombing of Bosnia in 1999 and by President Obama's air war in Libya in 2011.

In his testimony Wednesday, Panetta stressed the importance of getting international "permission" for taking military action, relegating the approval of Congress, should it be sought at all, to the status of a national afterthought.

"If it comes to an operation where we are trying to build a coalition of nations to work together to go in and operate as we did in Libya or Bosnia, for that matter Afghanistan, we want to do it with permissions either by NATO or by the international community," he said.

Sessions also questioned the Chairman of the Joint Chiefs about the legal basis for military action. General Dempsey listed three criteria: the United States would be "invited in" by a government under



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attack, would be acting in self-defense or would be operating "with some kind of international legal basis; an UNSCR [United Nations Security Resolution]...."

"Wait a minute, let's talk about an international legal basis," Sessions replied. "You answer under the Constitution to the United States government, do you not? And you don't need any international support before you would carry out a military operation authorized by the commander-in-chief..."

"No of course not," Dempsey answered. "That's the second one I mentioned."

"I just want to know, because there's a lot of reference here to international matters before we make a decision," Sessions said. "And I want to be sure that the United States military understands, and I know you do, that we're not dependent on a NATO resolution or a U.N. resolution to execute policies consistent with the national security of the United States."



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