

WXPOST  
David S. Broder

MAY 25 1975  
Congress  
And War  
Powers

The Mayaguez incident gave Congress and the President their first test of how an international dispute could be handled under the strictures of the War Powers Act. The example raises some unsettling questions—particularly about Congress.

Under the provisions of that law, passed in 1973 over the veto of President Nixon, the Chief Executive is required "in every instance possible . . . (to) consult with Congress" before taking actions risking hostilities. Any commitment of armed forces must end within 60 days unless their further use is endorsed by Congress.

In a seminar on Congress sponsored by Time Magazine last week, political scientist Alton Frye argued persuasively that the War Powers Act had come through well. The Mayaguez incident, he said, showed that despite all the complaints of Henry Kissinger and his deposed former leader, the executive branch of the American government is not hamstrung by the law.

Second, Frye said, the President, by meetings and phone calls to congressional leaders and a written message to the entire Congress, delivered within the prescribed 48 hours of the initiation of the incident, showed it is possible to comply with the "consultation" requirements.

There has been some dispute on the second point, with Senate Majority Leader Mike Mansfield (D-Mont.) and others strongly insisting that "we were informed, not consulted."

But that seems more of a semantic argument than one of substance. The War Powers Act was not intended to take the initiative in foreign affairs away from the President. Rather, its purpose was to make certain that presidential decisions involving the use of force would be subject to timely review by the legislative branch.

That is what Sen. Jacob K. Javits (R-N.Y.), one of the principal authors of the War Powers Act, meant when he said, on the second day of the Mayaguez incident, that the law "doesn't take away any of the President's powers, but it does give Congress the

power to stop him if it feels he's going too far."

That notion of Congress serving as a calm review body would be more plausible, had not the chairman of the Senate Foreign Relations Committee, John Sparkman of Alabama, already put himself on record, by the time Javits spoke, as saying the ship should be recovered "any way we can."

Indeed, rereading the record of that

week shows a clear pattern of congressional hip-shooting, often on the basis of the most fragmentary information.

On the second day, when Mr. Ford was positioning Marines for possible use, Senate Armed Services Committee Chairman John Stennis was urging Mr. Ford to "be as severe as necessary." Assistant Majority Leader Robert C. Byrd was calling for a 48-hour deadline.

On the third day, when three Cambodian gunboats were sunk in a prelude to the recapture of the Mayaguez, The Washington Post's Senate correspondent, Spencer Rich, wrote: "A handful of members questioned whether military action should have been delayed a bit. . . . But there wasn't any doubt that a strong tide was running in Congress all day for a forceful solution. . . ."

Rep. Wayne L. Hays of Ohio, third-ranking Democrat on the House International Relations Committee, said he was "only sorry they didn't sink 17 (ships), rather than three." And the Senate Foreign Relations Committee *unanimously* supported the President's use of force.

The fourth day, when the crew was retrieved, the only question for most members of Congress was how to get their words of praise on record fast enough to be noticed. (A notable exception was Sen. Gaylord Nelson (D-Wis.), who continued to question the handling of the Mayaguez incident, as he had, from the earliest days, questioned U.S. policy in Vietnam.) Sen. Henry M. Jackson (D-Wash.), who had opposed the use of force on the second day of the incident, flip-flopped and declared, "The President deserves high marks, and I would be the first to commend him."

Five, six and seven days after the incident began, the kind of information on which Congress ought to base its judgment finally started to emerge. It was learned that the Marines had landed on the wrong island, that casualties had been far heavier than first indicated, that the biggest non-nuclear weapon in the American arsenal had been dropped on a patch of jungle, that a mainland Cambodian oil dump had been attacked some time after the crew had been released, and that B-52s had been alerted for further unspecified massive air attacks.

These are matters that deserve examination, because the next challenge to American rights and interests may be more serious and sustained than the Mayaguez incident. But there is so far no sign that Congress will take them up. That kind of careful appraisal can come only from a Congress that demonstrates considerably more self-restraint than this one did.