

Foreign Policy: Congress More Active

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Following is the sixth in a series of seven articles exploring the Nixon Administration's style in foreign policy:

By JOHN W. FINNEY

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Senator J. W. Fulbright, summing up the work of the Foreign Relations Committee during the past Congress, observed that the once-cozy relationship with the Administration on foreign policy had been replaced by a more questioning attitude among the legislators.

In ways still not completely grasped and certainly not accepted by the executive branch, the changing Congressional attitude has introduced a new factor in the formulation of foreign and military policies.

At a time when control over foreign policy has tended to become ever more concentrated in the White House, and partly in reaction to that trend, Congress—primarily the Senate, thus far—has been reasserting a voice, long dormant and still ill-defined, in the formulation of foreign policy. In the House, the tendency of the Foreign Affairs Committee has been to regard itself as a subordinate partner.

As the Senate makes its voice heard, a subtle yet significant shift appears to be taking place in the balance of power between the legislative and executive branches.

For decades, the President has wielded unquestioned primacy in foreign policy, with

Congress largely acting as the passive, concurring partner when its approval was needed. As expressed in a 1936 Supreme Court decision that is still the leading precedent on the issue, the constitutional doctrine that has evolved holds that when it comes to foreign policy, the Presidency possesses a sovereignty inherited from the British crown and not dependent on affirmative grants of power under the Constitution or upon Congressional approval.

As long as foreign policy had little impact upon domestic issues, it was a doctrine that was unquestioningly accepted by Congress. Now, with foreign

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and domestic issues deeply intertwined, Congress has moved to challenge what the Supreme Court described in 1936 as the "external sovereignty."

In tone and in practice the Congressional voice is inherently negative. Neither under its constitutional power nor with its organization is Congress prepared to take a positive role in the formulation of foreign policy.

From that essentially negative stance it has moved to exercise a critical check on how the Administration develops and conducts foreign policy. The result has been to circumscribe the once-unchallenged latitude of the executive.

Cambodia is an example of the changing relationship. Eight months ago, President Nixon, relying on his constitutional powers as Commander in Chief, felt free to order military intervention in Cambodia without consulting Congress.

Restraints Were Imposed

At the initiative of the Senate Foreign Relations Committee, the legislators then imposed restraints on the President by specifying that he could not use funds to introduce American ground combat troops or military advisers into Cambodia again.

Another instance involved Spain. The State and Defense Departments found that they were no longer free to enter a new agreement on bases with the Franco Government without undergoing critical examination by the Foreign Relations Committee. In the end, despite Mr. Fulbright's insistence that a treaty would be preferable, the Administration resorted to an executive agreement, but only after reducing proposed military aid and declaring that the agreement did not represent a commitment to the defense of Spain.

At times the changing relationship has almost led to constitutional confrontations between the executive branch and Congress. Underlying the Congressional assertiveness is a feeling, which runs particularly deep in the Senate, that an imbalance has developed between the branches, especially in Presidential use of war powers.

As the decision-making on foreign policy has become more concentrated in the White House, Congressional committees have found themselves circumscribed in their traditional role of cross-examining policy-making officials.

Secretary of State William P. Rogers still appears before the committees, though with less frequency than his recent predecessors; at times his appearances before the Senate Foreign Relations Committee have been vetoed by the White House.

Another important element is that the Congressional committees cannot question Henry A. Kissinger, who, as the President's adviser on national security, can invoke the longstanding doctrine that White House officials do not testify on Capitol Hill.

Briefings for a Few

That doctrine has not prevented Mr. Kissinger from giving occasional political briefings to pro-Administration members of Congress on such topics as Cambodia and the arms talks with the Russians.

The closest the Foreign Relations Committee has come

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to establishing a dialogue with the man who undoubtedly is Mr. Nixon's most important maker of foreign policy has been private, unannounced dinner meetings that included Senator Fulbright.

Thus far the Administration and Congress have cautiously backed away from the brink of confrontation. When the restrictions on the Cambodian action appeared inevitable, the White House, after opposing them as a derogation of the President's powers as Commander in Chief, reluctantly accepted them as a restatement of its policy of not getting involved militarily.

The Foreign Relations Committee, in turn, has come to accept the dominance of the executive in conducting foreign policy, but with the important new qualification that it feels free to question and influence the determination of policy.

For all the bickering and feuding of recent years, it seems apparent that the Congressional criticism has had an influence on Administration policy.

Impasse in Some Areas

President Nixon's doctrine that the Asian nations must assume a greater burden of defending themselves reflected the complaint in Congress that the United States had over-committed itself.

In other areas an impasse developed. The Administration ignored the Senate's advice, incorporated in a resolution adopted last April, that the United States propose a moratorium on weapons testing and deployment as the first step toward an agreement limiting strategic arms. A group

of Senate liberals blocked the Administration's proposal for trade quotas, and conservatives prevented approval of the long-stalled genocide convention.

In former years Congress tended to regard its foreign-policy powers as limited to giving "advice and consent," which meant in practice the Senate's approval of treaties and ambassadors. To the growing distress of the Senate, the Administration tended to avoid treaties on important matters, preferring, as in the case of Spain, to take the route of executive agreements, which do not require sanction. Ambassadorships have become so routine that most members of the Foreign Relations Committee do not even bother to attend confirmation hearings.

More recently Congress has turned to other foreign-policy powers that it has under the Constitution but has not much resorted to: the power to declare war and to raise armed forces and the ultimate power over the purse strings. With the Senate taking the initiative Congress has begun to use those powers, although in a cautious way.

The Senate was unwilling to withhold money to force withdrawal of American forces from Vietnam, as proposed by Senators George McGovern and Mark O. Hatfield. After months of debate the House of Representatives and the Administration finally accepted a version offered by Senators John Sherman Cooper and Frank Church limiting the President's powers to undertake military actions in Cambodia.

Violation of Intent Seen

With the recent expansion of American air activities over Cambodia, Senators have asserted that the Administration has violated the spirit and intent of the Cooper-Church amendment.

On strictly legal grounds it is a difficult allegation for the amendment's sponsors to sustain. In the course of prolonged consideration, as Secretary of Defense Melvin R. Laird was quick to point out, the amendment was modified to exclude a prohibition on the use of air power in support of the Cambodian forces.

The underlying purpose of the Cooper-Church amendment, which was attached to a bill on foreign military sales, was to establish the principle that the President should not involve the nation in a war without the consent of Congress. That in turn has raised the larger constitutional question of the war-making powers of the President as Commander in Chief as against those of Congress.

At first, with amendments to appropriations bills, and now with general legislation, Congress is moving to redefine and limit the President's war-making powers. The movement started with the Senate Foreign Relations Committee but has spread to such groups as the Senate Armed Services and House Foreign Affairs Committees, both more traditionalist and more oriented to the executive branch.

Senator John Stennis of Mississippi, chairman of the Armed Services Committee, who has probably been the leading champion of the President's powers as Commander in Chief, recently announced that he was drafting legislation that gives the President authority to repel an attack on American forces but requires Congressional action "before hostilities can be extended for an appreciable time." The first lesson of Vietnam, he said, "is that in the future there must be a declaration of war by the Congress unless, of course, there is some major Pearl Harbor-type attack on the country."

Redefining Relationship

When it comes to checking on the daily conduct of foreign policy, Congress finds itself handicapped. The committees have neither the staff, the time nor the will to monitor the activities of all the dozens of departments and agencies concerned.

But the Senate Foreign Relations Committee had discovered that, like committees involved in the domestic field, it has the "oversight" power to investigate the activities of agencies. It has started using that power in a critical, fact-finding way.

Senator Fulbright, the chairman, summarizing the committee's activities, stressed the more critical approach in explaining how Congress was redefining the relationship between the executive and legislative branches.

"For many years," he wrote, "the role exercised by the committee on foreign relations was that of the unquestioning advocate of policies and programs submitted to the Senate by the executive branch of the Government." Now, he added the role is changing as "the committee has become aware that it is no service to the nation to accept without question judgments made by the executive."

During the last Congress, the Arkansas Democrat said, the committee "for the first time in decades sought to exercise a truly independent critical judgment of proposals on foreign and defense policy questions."

"The cozy relationship has been replaced by questions," he remarked.

The passive Congressional attitude—with its premise that "politics stops at the water's edge—goes back to World War II and the postwar evolution of bipartisanship in foreign policy under the impact of the cold war.



United Press International

Senator J. W. Fulbright, the Arkansas Democrat who heads the powerful Foreign Relations Committee, chatting with President Nixon at a White House ceremony. Under Mr. Fulbright's leadership, Congress's one-time deference to the executive branch in foreign policy matters has been replaced by a more questioning attitude among the legislators.

It developed under President Harry S. Truman and continued under Dwight D. Eisenhower and John F. Kennedy, but cooperation between the executive and legislative branches began to break down in the Administration of Lyndon B. Johnson as a result of the Vietnam war.

Initially, through publicized hearings, the Senate Foreign Relations Committee sought to change the Johnson Administration's policy by influencing public opinion—a method still one of the most powerful weapons at the disposal of Congress. More and more in the Nixon Administration the committee has been shifting to examining and challenging policy.

Symptomatic of the more questioning attitude was the formation two years ago of the Subcommittee on Security Agreements and Commitments Abroad, headed by Senator Stuart Symington, Democrat of Missouri. The panel sought to establish the facts underlying policy in particular countries.

2,500 Pages of Testimony

The subcommittee's staff members—Walter H. Pincus, a former newspaperman, and Roland A. Paul, a New York lawyer—traveled to 23 countries. On the basis of their findings, the subcommittee cross-examined diplomatic and military representatives on activities in more than a dozen countries, including the Philippines, Thailand, Laos, Japan, Korea, Turkey, Ethiopia, Morocco and Spain.

Out of the hearings came more than 2,500 pages of testi-

mony containing more factual information about foreign policy than had ever been obtained by the Foreign Relations Committee. Some of it was a revelation to the committee as well as to members of Congress in general.

Until then Congress was not aware of the extent of the United States military involvement in Laos, including bombing strikes in support of the Laotian Government. Nor was Congress aware that in 1960 the United States gave Ethiopia a commitment to support a 40,000-man army as well as a vague pledge to protect her territorial integrity.

In the new role of informed critic, the committee—and the Senate—have been assisted by the recent migration of Foreign Service officers from the State Department to Capitol Hill.

Some have gone to the staffs of Senators, among them William G. Miller, an assistant to Mr. Cooper, who was instrumental in drafting the basis of the Cooper-Church amendment. Others such as James G. Lowenstein and Richard M. Moose have joined the staff of the Foreign Relations Committee.

More by accident than by design the committee is establishing its own foreign service to provide independent, first-hand reports—a break with the practice that only legislators made inspection trips.

If nothing else, a staff member said with regard to Administration reports on foreign matters, the independent data have the effect of keeping them honest.

The executive had long kept secret the fact that an Army

arsenal on Okinawa was producing ammunition for captured Soviet-type AK-47 rifles, some of which were being turned over to the Cambodian forces. After the situation was reported in a cable from Messrs Lowenstein and Moose that was deliberately relayed through the State Department, Secretary of State William P. Rogers interpolated a reference to the ammunition in a statement he had prepared for delivery to the Foreign Relations Committee about military aid to Cambodia.

Kissinger Got Them Too

Mr. Rogers was not the only Administration official to read the cables from the two men during their tours of Indochina. Every morning they were placed on Mr. Kissinger's desk.

The extent that all of this has made policy makers more cautious or thorough may be immeasurable; it is apparent that the more aggressive committee attitude has contributed to the willingness of Congress to impose constraints on the Administration.

The Symington subcommittee's hearings on Laos led in 1969 to an amendment to the Defense Appropriations Act prohibiting the introduction of ground combat troops into Laos and Thailand. The subcommittee's disclosure that Thai, South Korean and Philippine troops were given extra pay for fighting in South Vietnam led to acceptance of an amendment by Mr. Fulbright prohibiting such payments.

One Administration reaction was to intensify secrecy, to the

point that State and Defense Department officials were ordered — presumably by the White House—not to discuss the overseas deployment of nuclear weapons with the Symington subcommittee.

On the other hand, there are indications that the Administration, especially the State Department, is reconciling itself to dealing with a more assertive Congress.

In his year-end statement Senator Fulbright noted that Secretary Rogers, "despite some reluctance to engage in public dialogue with the committee on foreign-policy issues, has shown understanding of our desire to exercise an independent judgment." As a result, he takes may set a pattern of cooperative relationships in the new Congress.

One question now arising is whether, as the Administration assumes a less belligerent attitude, the Senate committee will slip back into a more passive, cooperative role. The answer may lie in whether the committee decides to extend the mandate of the Symington panel or, as an alternative, to direct its long-dormant regional subcommittees to assume a more active role.

Playing Subordinate Part

Another question is whether the House committee will follow the Senate course. Under the chairmanship of Representative Thomas E. Morgan of Pennsylvania, the group, leaning to a subordinate role, has tended to review its function as giving a subordinate partner whose function is to give bipartisan support to the foreign policy dictated by the President. But there are indications that the breezes of independence are beginning to be felt.

After the Cambodian intervention a House Foreign Affairs subcommittee headed by Representative Clement J. Zablocki of Wisconsin held hearings on the President's war-making powers and produced a resolution, subsequently approved by the House, requiring him to submit a written report on the commitment of American forces to foreign hostilities.

With the departure of Speaker John W. McCormack, Mr. Morgan may no longer be under pressure from the leadership to rush pro-Administration resolutions to the floor or to stifle the growing dissent.

Perhaps the most important change in the House committee's attitude may be wrought by the recent Legislative Reorganization Act, which will permit television cameras at house hearings. On the basis of televised hearings the Senate Foreign Relations Committee established its public stature as an adversary of the executive branch; it was when the Senators discovered themselves being bested in televised debates that they turned to a more active approach to challenge Administration policy.

(SUNDAY)
Tomorrow: The substance behind the style.