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Deeply troubled by the U.S. experience in Southeast Asia, Congress recently overrode President Nixon's veto of the War Powers Resolution and voted to place new restraints on presidential warmaking authority. But debate continues over whether Congress succeeded in recapturing its control over U.S. wars or whether the resolution simply gave the President a blank check for 90 days of unilateral warmaking. Contrasting views of this question are presented by Merlo J. Pusey, former associate editor of The Washington Post and author of "The Way We Go To War" and by The New Republic in excerpts from an Oct. 27 editorial, "A Bad War Powers Bill."



The War Powers Bill: Two Views

'A Warning to the President'

The debate on the War Powers Resolution, which Congress finally passed over the President's veto, will go on for a long time. It remains a highly controversial piece of legislation because supposedly authoritative interpretations of it differ so widely and no one can now foresee how it will be applied to future crises.

President Nixon's opposition to the measure was a sort of ritualistic reflex. No President willingly relinquishes powers that he and his predecessors have been using. More difficult to understand was the support of his veto by Sen. Thomas Eagleton (D-Mo.) and some other liberals who were chiefly concerned with the imperfections of the conference compromise which the House and Senate finally accepted. When the showdown came, these forces voted against any restraint on presidential wars.

Senator Eagleton went so far as to call the War Powers Resolution "an historic tragedy." In his view it "gives the President and all of his successors in the future a predated 60-day unilateral war-making authority." But the President himself complained that the bill "would seriously undermine this nation's ability to act decisively and convincingly in times of international crisis." Both views are wide of the mark. Fearful that the final act would be so interpreted by those wishing to kill it, the authors of the conference compromise inserted specific provisions saying that it was not intended to alter the constitutional authority of the Congress or of the President" and that "nothing in this joint resolution . . . shall be construed as granting any authority to the President with respect to the introduction of the United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated. . . ."

What, then, does the new law mean? Sen. Jacob Javits (R-N.Y.), who, along with Rep. Clement J. Zablocki (D-Wis.), has been the chief sparkplug in the movement to curb presidential wars, says that it reflects the determination of Congress to recapture "the awesome power to make war." Congress has not

written on a blank page. Crude though it may be, this resolution passed by more than two-thirds of both the House and Senate says to the President that the country is deeply troubled by its experience in Southeast Asia and that it wants no more wars initiated and carried on by the President without authorization from the representatives of the people.

This principle is explicit, of course, in the Constitution. The power to declare war is very specifically given to Congress, while the President is allowed to repel sudden attacks without waiting for Congress to act. In recent decades, however, Congress has been almost a cipher in the warmaking process, except that it has sheepishly appropriated funds to carry on fighting initiated by various Presidents.

The most candid supporters of this practice see warmaking merely as an extension of diplomacy. Since the President has unquestioned control over the country's foreign relations, it is argued, he must have authority to use the armed forces whenever mere words, gestures and military maneuvers prove ineffective.

The bill would leave the President entirely free to conduct U.S. foreign affairs up to the point of making war. That constitutional power could not be altered in any circumstances by act of Congress. The new law only says that if the President uses the armed forces in actual hostilities or in situations "where imminent involvement in hostilities is clearly indicated by the circumstances," he must inform Congress and cite the authority for his actions. And he would have to withdraw from any such military operations within 60 days unless Congress should declare war, authorize continuance or extend the cut-off date, with an additional 30 days allowed for withdrawal if necessary. Without waiting for the 60 days to elapse, Congress could order the President to withdraw from any unauthorized military venture by concurrent resolution.

These mild provisions are no straight-jacket for the President.

Rather, they constitute a warning to the President that Congress intends to play its rightful constitutional role in the warmaking process.

It is idle to argue that unlimited power for the President in making war is necessary to enable the United States to cope with dictatorial rulers in other lands. The founding fathers would have been horrified by such an argument. Their basic purpose in giving the war power to Congress was to end for all time the danger of power-drunk executives committing the rank and file to death on the battlefield with no intervening voice from their representatives. Whatever may be said for the imperfect resolution that Congress has now passed, it is a welcome move toward restoration of popular control over the war power.

In trying to break away from the precedents of Korea and Vietnam, Congress has not attempted to tell the President that no move toward use of the armed forces can be made without a declaration of war. Sen. Hubert Humphrey (D-Minn.) reminded his colleagues that, when President Eisenhower decided it might be necessary to send troops to the Middle East, he went to Congress and asked for specific authority for such an operation. This was a reversion to the pattern that was used in President Jefferson's day. The current resolution specifically recognizes such authorizations, which are short of declarations of war.

Instead of hamstringing the President, this rather feeble reassertion of congressional power is an effort to restore the historic roles of the executive and legislative branches with a minimum of restraints and formalities. Its usefulness will obviously depend upon the willingness of present and future Presidents and congressional leaders to apply its provisions with comity and good faith. If the President refuses to respond to this cooperative gesture, the drive for more restrictive legislation is certain to be renewed. For the present, at least, the country appears to be strongly committed to the termination of presidential wars.

'It Does Not Fulfill the Need'

... We have long sympathized with attempts to control the executive's war-making authority, and we disagree completely with Mr. Nixon's efforts to preserve his almost absolute power in this domain. Yet, in our estimation, the present war powers bill is so riddled with reservations that, in many ways, it defeats its own purpose. Indeed it may give a President more power to take us into war than is granted him in the Constitution.

Except in the event of enemy attack, a President has no constitutional authority to initiate or declare war, a prerogative that belongs to Congress. Even Alexander Hamilton, who favored a strong executive, held during the Constitutional Convention that the warmaking power "is the peculiar and exclusive province of Congress," and, as Justice William O. Douglas pointed out during the Cambodia bombing controversy this summer, that interpretation was further strengthened in the Prize Cases of 1863. Nevertheless, in practice the legal limitations on Presidents have been ignored time and again within the past quarter-century. . . . Against this background of unilateral military actions by successive Presidents, the need for an explicit definition of the right to push the nation into war had been long overdue. To our regret the current bill does not fulfill that need.

In the first place the bill authorizes a President to get the nation into a fight without the prior legislative sanction in the event of a "national emergency created by attack upon . . . its armed forces"; considering the fact that more than a half million American soldiers are now deployed around the world, many of them as safe as the crater of an active volcano, this would effectively permit the President to escalate a war in those areas on his own initiative. Thus Mr. Nixon could conceivably have moved fresh forces into Thailand if he estimated that the 40,000 U.S. troops already there were endangered by the recent coup d'etat, and, with the same self-generated authority, he could increase our military strength in South Korea on the grounds

that our boys in that country are threatened. . . .

Another feature of the bill that seems to fortify rather than reduce a President's war powers is a clause that requires him merely to "consult" with Congress before introducing U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." In short that appears to say that a telephone call from the White House to the congressional leaders will suffice. And once troops are committed, the bill goes on to say, a President need only explain "in writing" within 48 hours the circumstances necessitating their intervention, the estimated scope and duration of the hostilities, and the authority under which he acted. . . .

More significantly, the bill permits a President to commit troops for 60 days simply by keeping in touch with Congress, and he can extend that period for another 30 days by certifying that "unavoidable military necessity" requires their prolonged presence. Criticizing the bill from opposite sides, Sen. Barry Goldwater (R-Ariz.) and Sen. Thomas Eagleton (D-Mo.) have emphasized that this timetable accords a President powers beyond those in the Constitution. Moreover it is difficult to imagine that Congress would compel a President to pull U.S. soldiers out, when they had been sent in ostensibly to defend the flag and the honor of America. Here again the Tonkin Gulf Resolution offers a lesson. Passed in August 1964, it was not repealed until January 1971—and even then it took two more years before U.S. troops were finally withdrawn from Vietnam. It also took until last August to halt the President's bombing of Cambodia, and that came about only after Congress deliberately voted to cut off his funds. So we concur in Senator Eagleton's opinion that this provision is nothing less than "an open-ended blank check for 90 days of war-making anywhere in the world by the President. . . ."

To a large extent the bill is confused because, in an attempt to reconcile their differences, the Senate and House produced a hodgepodge. Sen. Jacob Javits (R-N.Y.), who worked hard

to sponsor it, obliquely admitted that the result was less than ideal in his remarks during the Senate debate that "it is a miracle that we got this bill." That raises the question of whether bad legislation is better than no legislation. Senator Eagleton, who has long wanted to curb presidential war making power, obviously had this question in mind when he withdrew his support from the compromise version, commenting that the baby he had originally helped deliver "has been kidnapped."

We submit that Congress has ample latitude under the Constitution to restrain a President, as it demonstrated when it forced a halt to the bombing of Cambodia in August. Sen. John Stennis' (D-Miss.) project to investigate the Central Intelligence Agency, for instance, could expose what U.S. covert operatives are up to overseas and thereby contribute to curbing their activities. The Appropriations, Foreign Relations and Armed Services Committees in both chambers have authority to sit on other operations abroad. Above all Congress controls the purse. The key question is whether the legislature is going to use its prerogatives responsibly. "It is easy to roll this body because the executive branch comes in with power . . . we are afraid, we are fearful men," confessed Hubert Humphrey during the recent debate. His autocriticism ought to challenge Congress to exercise its authority over the disposition of our military power. That can be done without new legislation.

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