

# Report for Congress

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## **Informing Congress: The Role of the Executive in Times of War and Military Conflict, 1941-2001**

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# Informing Congress: The Role of the Executive in Times of War and Military Conflict, 1941-2001

## Summary

Under the Constitution of the United States, the President is responsible for prosecuting war and directing the armed forces during military conflicts, including attacks upon the nation. Congress is constitutionally empowered to declare war, may otherwise authorize the involvement of American armed forces in military conflict, appropriates funds for government activities and operations, including military actions, and engages in oversight to assess the extent to which government operations have been efficiently, economically, and effectively conducted using appropriated funds. Congress also has a role in prescribing intelligence and foreign policy.

In meeting these responsibilities, Congress expects and needs to be informed by executive branch leaders about relevant actions taken and being planned, policy developments, expenditures, and knowledge conditions. Consequently, the restriction of information disclosures to Congress prescribed in President George W. Bush's October 5, 2001, memorandum to top diplomatic, intelligence, and law enforcement officials drew critical reaction from various quarters of the House of Representatives and the Senate. Although the restrictive policy was quickly suspended by the President, questions have arisen concerning the role of the executive in times of war and military conflict in informing Congress regarding American involvement in such events. This report, which is intended to provide background information and will not be updated, provides a brief review of executive-congressional relations in this regard for 1941-2001.

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# Informing Congress: The Role of the Executive in Times of War and Military Conflict, 1941-2001

In the course of developing and executing a response to the September 11, 2001, terrorist attacks on the World Trade Center in New York City and the Pentagon in suburban Washington, DC, President George W. Bush set restrictive policy on the disclosure of related sensitive information to Congress. In an October 5 memorandum to the Secretaries of State, the Treasury, and Defense, the Attorney General, the Director of Central Intelligence, and the director of the Federal Bureau of Investigation, he indicated that “this Administration will continue to work to inform the leadership of the Congress about the course of, and important developments in, our critical military, intelligence, and law enforcement operations” while simultaneously honoring the “obligation to protect military operational security, intelligence sources and methods, and sensitive law enforcement investigations.”

Accordingly, your departments should adhere to the following procedures when providing briefings to the Congress relating to the information we have or the actions we plan to take:

- (i) Only you or officers expressly designated by you may brief Members of Congress regarding classified or sensitive law enforcement information; and
- (ii) The only Members of Congress whom you or your expressly designated officers may brief regarding classified or sensitive law enforcement information are the Speaker of the House, the House Minority Leader, the Senate Majority and Minority Leaders, and the Chairs and Ranking Members of the Intelligence Committees in the House and Senate.<sup>1</sup>

Released amidst allegations of congressional leaking and complaints that executive briefings for Congress had been inadequate, the new policy engendered almost universal opposition from the House and Senate membership.<sup>2</sup> Five days after its prescription, the new policy was suspended, with an immediate effect being that

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<sup>1</sup> The White House, “Disclosures to the Congress,” Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Director of Central Intelligence, Director of the Federal Bureau of Investigation (Washington: Oct. 5, 2001).

<sup>2</sup> Dave Boyer, “Bush’s Curbs on Classified Briefings Irk Congress,” *Washington Times*, Oct. 10, 2001, p. A8; Dana Milbank and Peter Slevin, “Bush Edict on Briefings Irks Hill,” *Washington Post*, Oct. 10, 2001, pp. A1, A4.

members of the armed services committees and foreign affairs committees could be briefed by Pentagon and State Department leaders as they had been prior to the President's October 5 policy memorandum.<sup>3</sup>

Under the Constitution of the United States, the President is responsible for prosecuting war and directing the armed forces during military conflicts, including attacks upon the nation. Congress is constitutionally empowered to declare war, may otherwise authorize the involvement of American armed forces in military conflict, appropriates funds for government activities and operations, including military actions, and engages in oversight to assess the extent to which government operations have been efficiently, economically, and effectively conducted using appropriated funds. Congress also has a role in prescribing intelligence and foreign policy.

In meeting these responsibilities, Congress expects and needs to be informed by executive branch leaders about relevant actions taken and being planned, policy developments, expenditures, and knowledge conditions. Consequently, the information restrictions prescribed in President Bush's October 5 memorandum drew critical reaction from various quarters of the House of Representatives and the Senate. Although the restrictive policy was quickly suspended by the President, questions have arisen concerning the role of the executive in times of war and military conflict in informing Congress regarding American involvement in such events. This report offers a brief review of executive-congressional relations in this regard for 1941-2001.

## World War II

**Background.** The formal entry of the United States into World War II occurred on December 8, 1941, with a declaration of war against Japan in response to the attack on Pearl Harbor in the Hawaiian Islands that had occurred the previous day.<sup>4</sup> Three days later, on December 11, war was declared against Germany and Italy.<sup>5</sup> As a result of the 1940 elections, President Franklin D. Roosevelt had been returned to office for an unprecedented third term. His party held large majorities in both houses of Congress: 267 Democrats to 162 Republicans in the House and 66 Democrats to 28 Republicans in the Senate.

During Roosevelt's first and second presidential terms (1933-1940), as totalitarian regimes began threatening the peace of Europe and Asia, Congress, led by large Democratic majorities, exhibited strong favor for isolationism and neutrality. The Johnson Debt Default Act of 1934 prohibited loans to any foreign government in default to the United States, an attempt to disentangle the United State from European economies.<sup>6</sup> By June 15, 1934, Czechoslovakia, Great Britain, Italy, Latvia, Lithuania, and Rumania formally defaulted, leaving only Finland to meet its

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<sup>3</sup> Joseph Curl and Dave Boyer, "Bush Resumes Hill Intelligence Briefings," *Washington Times*, Oct. 11, 2001, p. A3.

<sup>4</sup> 55 Stat. 795.

<sup>5</sup> 55 Stat. 796, 797.

<sup>6</sup> 48 Stat. 574.

payments in full. In the wake of Italy's 1935 invasion of Ethiopia, the 1936 civil war in Spain, and aggressive actions by both Germany and Japan toward neighboring nations, Congress adopted a series of Neutrality Acts restricting arms shipments and travel by American citizens on the vessels of belligerent nations.<sup>7</sup> Two months after war commenced in Europe in September 1939, Congress, at the President's request, modified the neutrality law by repealing the arms embargo and authorizing "cash and carry" exports of arms and munitions to belligerent powers.<sup>8</sup>

In April 1934, the Senate established the Special Committee on Investigation of the Munitions Industry to conduct an inquiry into the manufacture of, and traffic in, arms in the United States. Chaired by Senator Gerald P. Nye (R-ND), who had introduced the resolution for the panel's creation, the committee conducted public hearings stressing the heavy profits realized by financiers and armament makers during World War I. Continuing until 1936, the committee is credited with strengthening isolationist sentiment in Congress and the nation, and setting the background for the Neutrality Acts of 1935, 1936, and 1937.<sup>9</sup> Thus, through its investigations, the climate of opinion it helped generate, and the neutrality legislation that it nurtured, the Nye committee constituted something of a brake on the efforts of the Roosevelt Administration to strengthen and expand the national defense program or to pursue a more internationalist foreign policy.

The Nye committee was no longer a concern to FDR as America became engaged in World War II, but two other congressional panels likely occupied White House thinking as the President contemplated his wartime relationship with Congress. The first was a House creation, the Special Committee to Investigate Un-American Activities, initially established in 1938. The panel had a broad mandate to probe "un-American propaganda activities in the United States," the diffusion of "subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin," and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation."<sup>10</sup> While the committee's primary target was the Communist Party and its affiliates, its mandate to pursue the perpetrators of "subversive and un-American propaganda" of either a domestic or foreign origin could be regarded as authority to investigate any private organization promoting social, political, or economic change; to probe any federal entity, including the armed forces, regarding public affairs and public education activities; or even to venture into the realm of foreign policy. However, the chairman of the committee, Representative Martin Dies (D-TX), was a conservative who was on record as an opponent of Roosevelt's New Deal and the political interests supporting

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<sup>7</sup> 49 Stat. 1081, 1152; 50 Stat. 121.

<sup>8</sup> 54 Stat. 4.

<sup>9</sup> Wayne S. Cole, *Senator Gerald P. Nye and American Foreign Relations* (Minneapolis, MN: University of Minnesota Press, 1962); John Edward Wiltz, *In Search of Peace: The Senate Munitions Inquiry, 1934-1936* (Baton Rouge, LA: Louisiana State University Press, 1963); John Edward Wiltz, "The Nye Munitions Committee, 1934," in Arthur M. Schlesinger, Jr., and Roger Bruns, eds., *Congress Investigates: A Documented History, 1792-1974*, vol. 4 (New York: Chelsea House, 1975), pp. 2735-2767.

<sup>10</sup> H.Res. 282, 75<sup>th</sup> Cong., adopted, as amended, May 26, 1938.

it.<sup>11</sup> House leaders from the President's party sought to keep Dies and his committee narrowly focused so as to avoid his wandering into any aspect of the war effort and making demands for sensitive information.

Such a strategy of containment could not be contemplated in the case of the other committee of concern, the Senate Special Committee to Investigate the National Defense Program. Established in March 1941, war mobilization and defense production were the primary elements of its mandate. The panel had been created on the initiative of Senator Harry S. Truman (D-MO), who had just been elected to his second term and was concerned that defense contracts were not being fairly allocated within the country. Virtually unknown outside his home state, Truman gradually gained visibility by supporting the New Deal. Although the White House did not want a rogue committee producing unwelcomed publicity about defense contracting and the progress of mobilization efforts, Truman's proposal and the prospect of his leading such a panel proved to be an acceptable alternative to similar efforts by anti-New Dealers and Republicans.<sup>12</sup>

**War Entry.** The attack on Pearl Harbor and the U.S. declaration of war the following day launched the President and Congress on their wartime relationship. Ironically, the circumstances of the attack and the immediate response of American armed forces to it became one of the first information issues for the two branches. Due to its insular location some 2,400 miles southwest of California and its totally military status, Pearl Harbor, in the aftermath of the Japanese attack, was impervious to the news media and the surrounding Territory of Hawaii was cloaked in martial law. The President seemingly had close control over information about the damage that had been inflicted. Yet, by the evening of December 8, *New York Times* Washington bureau chief Arthur Krock had learned that 90% of the fleet had been disabled at Pearl Harbor.<sup>13</sup> Still, for many weeks, the public did not learn of the extent of the loss, those in possession of the information being afraid that its disclosure would invite a Japanese amphibious assault on the islands. Nonetheless, by February 1942, blame was being fixed.

Senator David I. Walsh, the Chairman of the Naval Affairs Committee, advanced the theory that the Executive Branch was wholly responsible for Pearl Harbor, thus exculpating Congress and, inferentially, himself from blame. It was not fair to say "that there has been any failure on the part of Congress to act in any

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<sup>11</sup> Earl Latham, *The Communist Controversy in Washington: From the New Deal to McCarthy* (Cambridge, MA: Harvard University Press, 1966); August Raymond Ogden, *The Dies Committee: A Study of the Special House Committee for the Investigation of Un-American Activities, 1938-1944* (Washington: Catholic University of America Press, 1945); Michael Wreszin, "The Dies Committee, 1938," in Schlesinger and Bruns, eds., *Congress Investigates: A Documented History, 1792-1974*, vol. 4, pp. 2923-2956.

<sup>12</sup> Donald H. Riddle, *The Truman Committee: A Study in Congressional Responsibility* (New Brunswick, NJ: Rutgers University Press, 1964); Harry A. Toulmin, Jr., *Diary of Democracy: The Senate War Investigating Committee* (New York: Richard R. Smith, 1947); Theodore Wilson, "The Truman Committee, 1941," in Schlesinger and Bruns, eds., *Congress Investigates: A Documented History, 1792-1974*, vol. 4, pp. 3115-3136.

<sup>13</sup> David Brinkley, *Washington Goes to War* (New York: Alfred A. Knopf, 1988), p. 92.

manner that would have prevented what happened at Pearl Harbor,” he said. “The operations at Pearl Harbor were an executive function, and responsibility for them was lodged in the departments.”<sup>14</sup>

Thus, a waiting game ensued. President Roosevelt sought to satisfy Congress and the public with a fact finding report prepared by an investigating commission under the chairmanship of Supreme Court Associate Justice Owen Roberts.<sup>15</sup> Congress continued to hold the President and his subordinates, both civilian and military, responsible for American defenses at Pearl Harbor, continued to pursue its own avenues of information about the attack, and gave no indication that the Roosevelt Administration was absolved of any responsibility to inform the legislature about the prosecution of the war declared in response to the attack.

As the course of the war became more certain and the prospect of the Japanese navy making any return to the Hawaiian Islands receded, Congress, in a 1944 extension of “all statutes, resolutions, laws, articles, and regulations, affecting the possible prosecution of any person or persons, military or civil, connected with the Pearl Harbor catastrophe of December 7, 1941, or involved in any other possible or apparent dereliction of duty, or crime or offense against the United States,” also directed the Secretary of War and the Secretary of the Navy to create boards of inquiry to examine the Pearl Harbor attack.<sup>16</sup> Finally, about a month after the surrender of Japan, Congress mandated the Joint Committee on the Investigation of the Pearl Harbor Attack to “make a full and complete investigation of the facts relating to the events and circumstances leading up to and following the attack made by Japanese armed forces upon Pearl Harbor.” Chaired by Senator Alben W. Barkley (D-KY), the panel held extensive hearings between November 11, 1945, and May 31, 1946, and reviewed, as well, the work of the Roberts Commission and the Army and Navy boards investigating the Pearl Harbor attack. Reporting in July 1946, a bipartisan majority of the joint committee blamed the inadequacies of the national defense system for the poor response at Pearl Harbor, while a minority regarded the tragedy as “primarily a failure of men,” but at this late date, such conclusions garnered little public interest.<sup>17</sup>

Immediately after the Pearl Harbor attack, Senator Arthur H. Vandenberg (R-MI) had advanced the idea of creating a single committee to serve as a congressional liaison to the executive branch on the conduct of the war. The model Vandenberg had in mind was the Joint Committee on the Conduct of the War from the Civil War era.<sup>18</sup> Lacking in details regarding such important political considerations as the composition of the panel, the manner in which its members would be selected, and

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<sup>14</sup> Roland Young, *Congressional Politics in the Second World War* (New York: Columbia University Press, 1956), p. 170.

<sup>15</sup> See E.O. 8983, 3 C.F.R., 1938-1943 Comp., p. 1046.

<sup>16</sup> 58 Stat. 276.

<sup>17</sup> U.S. Congress, Joint Committee on the Investigation of the Pearl Harbor Attack, *Report of the Joint Committee on the Pearl Harbor Attack*, 79<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Doc. 244 (Washington: GPO, 1946).

<sup>18</sup> *Congressional Record*, vol. 87, Dec. 9, 1941, p. 9543.



its mission and responsibilities, his proposal, and others like it, apparently had little appeal.

Instead of centralizing control in a single war committee, Congress dispersed control over a wide number of standing committees and newly created investigation committees. During the war, also, the State, War, and Navy departments revealed information to relevant legislative committees which was not revealed to the whole Congress or to the public. In addition, the President held weekly “free and open discussions” with the political leaders of the House and Senate, and Speaker Sam Rayburn once told the House that “these are not blowpulling conferences.”<sup>19</sup>

Among the initial investigating committees were the aforementioned Truman panel (established in 1941); the House Select Committee Investigating National Defense Migration (1940), which expanded its activities to parallel the Truman committee; the Senate Special Committee to Investigate Gasoline and Fuel-Oil Shortages (1941); and House and Senate committees on military affairs (1822, 1816), naval affairs (1822, 1816), and small business (1941, 1940). Other panels created during the war included the Senate Special Committee to Investigate Agricultural Labor Shortages in the West (1942); the Senate Committee to Investigate Production, Transportation, and Use of Fuels in Areas West of the Mississippi River (1942); the Senate Special Committee to Investigate the Effects of the Centralization of Heavy Industry (1943); the Senate Special Committee to Investigate Petroleum Resources (1944); the House Select Committee to Investigate the Federal Communications Commission (1943); the House Select Committee to Investigate Acts of Executive Agencies Beyond the Scope of Their Authority (1943); the House and Senate Special Committees on Postwar Economic Policy and Planning (1944, 1943); the House Select Committee on Post-War Military Policy (1944); the House Select Committee to Investigate Seizure of Montgomery Ward and Company (1944); the House Special Committee to Investigate Campaign Expenditures (1944); and the House Select Committee to Investigate Supplies and Shortages of Food, Particularly Meat (1945).

The proliferation of investigation committees was one of the singular characteristics of the war Congress. The emphasis on investigation, on the control of policy after the passage of an Act, was a spontaneous congressional reaction, as it were, to the increasing number of activities with which the administrative branch was concerned.<sup>20</sup>

Nonetheless, because “[n]o method was worked out by which Congress as a whole was informed on the developments of the war, ... in the aggregate, members of Congress had no more intimate knowledge of how the war was going than the average reader of a metropolitan newspaper.”<sup>21</sup> When a secret session of the Senate was held in 1943 to hear the report of five Senators who had just returned from the battlefield and a badly reported version of the proceeding appeared in the press shortly thereafter, Senator Richard B. Russell (D-GA), who had been on the trip,

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<sup>19</sup> Young, *Congressional Politics in the Second World War*, pp. 18-19.

<sup>20</sup> *Ibid.*, p. 19.

<sup>21</sup> *Ibid.*, p. 145.

correctly predicted that it would “probably be a long time before another executive session is held.”<sup>22</sup> For the most part, the army and the navy developed a “cooperative and sympathetic relationship” with the congressional armed services committees: senior officers “confided in these committees and relied on them for political support.”

Congress played a very small role, either as critic or as participant, in the several military and military-political conferences in which the United States participated during the war, although it was given some general information on the decisions made at these conferences. The President discussed the results of the Casablanca Conference (1943), where the policy of unconditional surrender was developed, in an off-the-record conversation with some eleven leaders from Congress and with representatives of the State, War, and Navy Departments. On the Quebec Conference (1943), the President sent a report to Congress in which he defended the policy of keeping some matters secret. It was difficult to remain silent, he said, “when unjustified attack and criticism come from those who are not in a position to have all the facts,” and he asked for faith that decisions were being made on better evidence than critics had implied. Secretary [of State] Hull spoke before a joint session of Congress following the Moscow Conference (1943). President Roosevelt also addressed Congress—as it happened, for the last time—on the results of the Yalta Conference (1945).<sup>23</sup>

During the prosecution of the war, Congress appears to have been willing to allow the President to prescribe military strategy and foreign policy, and was seemingly satisfied, at the time, with the arrangements for being informed by the President about such matters. “Congress conducted more than a hundred investigations during the Second World War, exploring many aspects of war policy but falling short of investigating the actual conduct of the war.”<sup>24</sup> Prior to becoming Vice President in 1944, Senator Truman, as chairman of the Senate Special Committee to Investigate the National Defense Program, repeatedly renounced any desire to intrude into military strategy or tactics. When his investigators uncovered enormous and unexplained expenditures for something called the Manhattan Project, he telephoned Secretary of War Henry L. Stimson. Told “that’s a matter which I know all about personally, and I am only one of the group of two or three men in the whole world who know about it ... a very important secret development,” Truman assured Stimson that “you won’t have to say another word to me.”<sup>25</sup> Ironically, with FDR’s death in April 1945, it would be Stimson’s duty to inform President Truman about the production of the atomic bomb by the Manhattan Project.

The [Truman] committee performed splendidly in its principal role as production watchdog. Perhaps the greatest of the committee’s accomplishments was the high level of public confidence in the Roosevelt Administration’s conduct of the war. The committee served as an important source of information on what the government was doing to win the war, and most Americans accepted its

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<sup>22</sup> *Congressional Record*, vol. 89, Oct. 28, 1943, p. 8859.

<sup>23</sup> Young, *Congressional Politics in the Second World War*, pp. 146-147.

<sup>24</sup> *Ibid.*, p. 227.

<sup>25</sup> Wilson, “The Truman Committee, 1941,” p. 3135.

assurances that the domestic war effort, despite administrative tangles and bureaucratic incompetence, was going well.<sup>26</sup>

Certainly there were those in the Roosevelt Administration who realized that the regime was the beneficiary of such public support because, with rare exception, they complied with the information requests of the Truman committee.

## Korean Conflict

**Background.** The conclusion of World War II in 1945 brought changes to many parts of the world, Korea being one such area. A peninsular country extending some 620 miles southward from the Chinese province of Manchuria, Korea fell under Japanese control as a consequence of the Russo-Japanese War of 1904-1905. Annexed to Japan, only 125 miles away, in 1910, it remained under Japanese control until 1945. At the November 1943 Cairo Conference, Great Britain, the Republic of China, and the United States, pursuant to the Atlantic Charter of 1941, agreed that Korea would become a free and independent nation. The Soviet Union adhered to this agreement in its August 1945 declaration of war on Japan. In a modification on a prior agreement with the Soviet Union on an intended four-power trusteeship over Korea, the United States proposed in mid-August 1945 that the surrender of Japanese armed forces in Korea be accepted by the Americans in the area south of, and by the Soviets in the area north of, the bisecting 38<sup>th</sup> degree parallel of north latitude. The Soviet Union quickly agreed to this arrangement and American troops arrived in Korea on September 8, 1945, to effect the repatriation of surrendering Japanese soldiers.

Encountering Soviet obstruction of communication across the 38<sup>th</sup> parallel, the United States, in the Moscow Agreement of December 27, 1945, obtained Soviet agreement to attempt to form a provisional government for all of Korea. Efforts in this regard in 1946 and 1947 failed on the issue of which Koreans were to be consulted on unification proposals. In September 1947, the United States placed the matter before the United Nations General Assembly, which resolved to hold Korea-wide elections for a united and independent Korea. Refused entry to the north by the Soviet occupation commander, the U.N. election commission was reauthorized to observe voting in the south alone. These May 10, 1948, elections laid the groundwork for a July 17 constitution and the August 15 establishment of the Republic of Korea (ROK). In the north, with Soviet assistance, a new government—the Democratic People’s Republic of Korea (DPRK)—was established on September 9. American armed forces completed a staged withdrawal from the south in June 1949. As these troops and their Soviet counterparts departed, increasingly powerful Korean forces replaced them in both sectors. Preceded by hostilities and armed incidents along the 38<sup>th</sup> parallel, an invasion of ROK territory across the 38<sup>th</sup> parallel by DPRK forces occurred, June 25, 1950, with the aim of unifying the country by force.

In America, news of the invasion was received in a highly unsettled political environment. First elected to the Senate in 1934, Harry S. Truman (D-MO) was

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<sup>26</sup> Ibid., p. 3136.

selected by FDR to be his vice presidential running mate in 1944 for a number of reasons, not the least of which were his political loyalty to the President, personal integrity, and record of being a hard worker. Truman succeeded to the presidency in April 1945 when Roosevelt died suddenly in Warm Springs, Georgia. In the months that followed, he was called upon to lead the participation of the United States in the United Nations conference; to participate in the Potsdam conference on the occupation and control of Germany, as well as the settlement of various European questions; to direct the use of the atomic bomb against Japan; to accept the surrender of Japan; and to continue planning and directing the conversion of the American economy to peacetime conditions. The following year, he experienced growing hostilities with the Soviet Union, a World War II ally, and the onset of the Cold War. Early in 1947, he responded to the growing Soviet threat with the Truman Doctrine, calling for the containment of Soviet imperialist expansion and pledging U.S. economic and military aid to Greece and Turkey, and the Marshall Plan to assist European nations with economic recovery and a return to political stability. The 1946 elections brought Truman the loss of Democratic Party majorities in both houses for the 80<sup>th</sup> Congress. These were regained in 1948, when Truman also won a surprise return to the White House after dissident factions of his party had bolted from the Democratic National Convention to form their own parties with presidential candidates—the States’ Rights or “Dixiecrat” Party nominating Strom Thurmond and the Progressive Party selecting Henry Wallace. Such divisions were reflective of a number of fractious issues—racial equality, labor rights, anti-communism, military preparedness, and economic stability—that would continue to charge the political atmosphere.

The years immediately following the conclusion of World War II were also a time of change for Congress. As had been the case after previous wars, the return to peace activated a congressional desire to dismantle the executive’s war machinery.

Much of Congress’ antagonism to the war agencies stemmed from a recognition that the gigantic executive establishment was making it increasingly difficult for the legislature to maintain its function as a coequal branch of government. As the war progressed, the problem became so disturbing to the responsible leaders of both parties that there was general agreement that something would have to be done about it when the war was over.<sup>27</sup>

One of the first steps taken by Congress was to return to an issue that was under consideration when war came in 1941. This was legislation designed to bring order, uniformity, and visibility to the rulemaking activities of the federal agencies.<sup>28</sup> It was enacted as the Administrative Procedure Act of 1946.<sup>29</sup>

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<sup>27</sup> Alvin M. Josephy, Jr., *On the Hill: A History of the American Congress* (New York: Simon and Schuster, 1979), pp. 335-336.

<sup>28</sup> See U.S. Congress, Senate, *Administrative Procedure in Government Agencies: Report of the Committee on Administrative Procedure, 77<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Doc. 8* (Washington: GPO, 1941); David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (Tuscaloosa, AL: University of Alabama Press, 2000).

<sup>29</sup> 60 Stat. 237.

Next, Congress “plowed through the job of trying to bring the executive back to manageable size (some twenty-nine war agencies had spring up under the Office of [sic] Emergency Management alone, which the President had created by an executive order). As quickly as it could, Congress reduced the massive wartime apparatus by repealing authorizations and grants of power, terminating agencies, abolishing administrative positions, and providing for the transfer of government undertakings to private business.”<sup>30</sup> To assist with this effort, Congress, in 1947, mandated the Commission on the Organization of the Executive Branch of the Government, which became known as the Hoover Commission, in popular reference to the panel’s chairman, former President Herbert Hoover.<sup>31</sup>

Another accomplishment, the Legislative Reorganization Act of 1946, reduced the number of House and Senate standing committees; adjusted their legislative jurisdictions accordingly; encouraged “continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of” the standing committees; and expanded the capacity of the Legislative Reference Service as a congressional support agency.<sup>32</sup> Carried over into standing status was the House Special Committee on Un-American Activities, which became a powerful and controversial investigative panel.<sup>33</sup> Furthermore, the consolidation of the committees tended to strengthen the position of conservative chairmen, particularly Southern Democrats, who had opposed the New Deal and now were resistant to many of the initiatives of the Truman Administration. Subcommittees and special committees soon began to proliferate, and, in the view of historian Alvin Josephy, “the 1946 act failed to cope with the significant question of the distribution of power within Congress and the equality of power between Congress and the executive branch—two problems that dominated congressional history after World War II.” A case in point, wrote Josephy, was the House Committee on Rules.

In 1945, it turned down requests from President Truman for rules that would permit the House to vote on a bill for a permanent Fair Employment Practice Committee and consider raising the minimum wage. The Rules Committee the next year refused to clear for House discussion an administration labor-relations bill and instead reported out a stern antilabor measure .... When Congress, in a punitive postwar mood toward union labor, passed that bill, Truman vetoed it, but in 1947, the Eightieth Congress passed—and made stick over another Truman veto—the Taft-Hartley Act, which outlawed the closed shop.<sup>34</sup>

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<sup>30</sup> Josephy, *On the Hill*, p. 340.

<sup>31</sup> 61 Stat. 246.

<sup>32</sup> 60 Stat. 812, 832.

<sup>33</sup> See Carl Beck, *Contempt of Congress: A Study of the Prosecutions Initiated by the Committee on Un-American Activities, 1945-1957* (New Orleans, LA: Hauser, 1959); Robert K. Carr, *The House Committee on Un-American Activities, 1945-1950* (Ithaca, NY: Cornell University Press, 1952); Earl Latham, *The Communist Controversy in Washington: From the New Deal to McCarthy* (Cambridge, MA: Harvard University Press, 1966).

<sup>34</sup> Josephy, *On the Hill*, p. 342.

Five months before the June 25, 1950, DPRK invasion of South Korea, a junior Senator, Joseph R. McCarthy (R-WI), in a routine Lincoln Day speech in Wheeling, West Virginia, offered the startling revelation that he knew the names of a number of Communists working in the Department of State. He repeated his charges on the Senate floor on February 20.<sup>35</sup> The following day, Senator Scott Lucas (D-IL), the Majority Leader, offered a resolution calling for an inquiry into the allegations by the Committee on Foreign Relations.<sup>36</sup> It was approved, after lengthy debate, the following day.<sup>37</sup> An inquiry, pursuant to the resolution, was begun by a subcommittee of the Senate Committee on Foreign Relations on March 8. Senator Millard E. Tydings (D-MD) chaired the subcommittee; Senator McCarthy was the initial witness; hearings were held on 31 days, concluding just after the invasion of South Korea.<sup>38</sup> More allegations about Communists in government, however, would be made by Senator McCarthy.

In the November 1950 congressional elections, Republicans gained five seats in the Senate and 28 in the House, but the Democrats held a two-seat margin in the Senate and 35-seat edge in the House. Two years later, on March 30, 1952, President Truman announced he was not a candidate for reelection. In November, the Republican candidate, former General Dwight D. Eisenhower, captured the presidency. Among the campaign issues was the Truman Administration's foreign policy and military efforts on behalf of South Korea. On December 2, President-elect Eisenhower, fulfilling a campaign pledge, visited South Korea. Republicans also gained a one-seat majority in the Senate and an eight-seat majority in the House. Senator McCarthy became the chairman of the Committee on Government Operations (now Governmental Affairs) and its Permanent Subcommittee on Investigations, which he led during 1953-1954 in a long series of hearings on the role of Communism in government and other areas of American life. On June 26, 1953, an armistice was signed in Panmunjon, halting the Korean hostilities. An uneasy truce subsequently prevailed, with numerous violations of the armistice agreement, but no renewal of open conflict.

**Invasion Response.** Such was the atmosphere surrounding the June 25, 1950, DPRK invasion of South Korea. In May, Senator Tom Connolly (D-TX), the chairman of the Committee on Foreign Relations and a man familiar with Korea's vulnerability, reportedly had commented that the Soviet Union could seize the southern territory without U.S. intervention because the ROK was not "very greatly important."<sup>39</sup> Two days after the invasion, he was one of 15 congressional leaders invited to the White House by the President in order that, by Truman's own account,

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<sup>35</sup> *Congressional Record*, vol. 96, Feb. 20, 1950, pp. 1952-1981.

<sup>36</sup> *Ibid.*, Feb. 21, 1950, pp. 2062-2068.

<sup>37</sup> *Ibid.*, Feb. 22, 1950, pp. 2125, 2129-2150.

<sup>38</sup> U.S. Congress, Senate Committee on Foreign Relations, *State Department Employee Loyalty Investigation*, hearings pursuant to S.Res. 231, 81<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1950).

<sup>39</sup> Robert Leckie, *Conflict: The History of the Korean War* (New York: DaCapo, 1996), p. 37.

he “might inform them on the events and the decisions of the past few days.”<sup>40</sup> He next conferred with 21 congressional leaders on December 1.<sup>41</sup> Truman’s memoirs also indicate that Vice President Alben W. Barkley, who attended National Security Council meetings and was otherwise informed about the developing Korean situation, “associated daily” with his old Senate colleagues, informally advising them on various matters and making their views known to the President.<sup>42</sup> Truman apparently preferred such White House meetings with congressional leaders to making a formal address to Congress because he thought “Korea was a United Nations matter” involving a collectivity of nations and, accordingly, “our country should not make an individual approach to it,” as might be conveyed by the official remarks of the President speaking to a joint session of the legislature.<sup>43</sup> At the December 1 meeting, Truman also told the congressional leaders that he would soon be sending a message to Congress requesting supplemental military appropriations, and that he “would be available to answer any questions that anyone might have about this request, and so would the members of my staff and administration.”<sup>44</sup>

The President met with senior Democratic and Republican members of the House and Senate appropriations, armed services, and foreign affairs committees on December 13 to discuss “a sharp step-up in our mobilization,” including the declaration of a national emergency, which would activate a broad variety of extraordinary statutory authorities. The following day, a meeting was held with congressional leaders to discuss economic mobilization plans, and another meeting with Representatives and Senators occurred thereafter, with “emphasis on the economic problems of allocations and wage and price controls.”<sup>45</sup> That these sessions did not satisfy the information desires of all Members of Congress regarding the Korean situation was reflected in a resolution introduced in December by Senator James P. Kem (R-MO) with 24 of his colleagues, calling on the President to give Congress the details of his recent talks with British Prime Minister Clement Atlee and to submit in treaty form any agreements reached. With the assistance of three Republican Senators, Senator Tom Connolly (D-TX) succeeded in having the resolution referred to his Committee on Foreign Relations, where it was held.<sup>46</sup>

Truman had initially responded to the June 25 invasion by authorizing, on June 27, the commitment of U.S. air and naval forces in support of the defending ROK army.<sup>47</sup> Three days later, U.S. ground forces were committed.<sup>48</sup> These actions were taken by the President without consulting Congress or seeking a declaration of war,

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<sup>40</sup> Harry S. Truman, *Memoirs: Years of Trial and Hope* (Garden City, NY: Doubleday, 1956), p. 338.

<sup>41</sup> *Ibid.*, p. 390.

<sup>42</sup> *Ibid.*, p. 386.

<sup>43</sup> *Ibid.*, p. 388.

<sup>44</sup> *Ibid.*, p. 391.

<sup>45</sup> *Ibid.*, pp. 420-426.

<sup>46</sup> *Ibid.*, p. 410.

<sup>47</sup> *Ibid.*, p. 337.

<sup>48</sup> *Ibid.*, p. 343.

and “there was little opposition to his intervention until the end of the year, after China had entered the war and inflicted serious reverses on the American forces.”<sup>49</sup> Thereafter, beginning in January 1951, a so-called “great debate” ensued in Congress and elsewhere over the nation’s military commitments abroad. It ended in early April when resolutions were adopted supporting the dispatch of four U.S. Army divisions to Europe, but also stating the sense of the Senate that no additional ground forces should be sent to Europe by the President without congressional approval.<sup>50</sup>

Shortly thereafter, on April 11, 1951, President Truman, having twice earlier considered the matter, decided to relieve General Douglas MacArthur of his commands in the Far East.<sup>51</sup> A venerated and legendary figure, MacArthur had a record of long and distinguished military service spanning two world wars and including duties as Army Chief of Staff, commander of the Philippine armed forces, and military governor of Japan. His unceremonious dismissal by Truman shocked the American public and many Members of Congress. Returning to the United States after a 14-year absence, he addressed a joint session of Congress, at the invitation of the congressional leadership, on April 19. The insistence of Senate Republicans for a special investigating committee with equal representation of both parties was successfully opposed in favor a joint effort by the Committee on Armed Services and the Committee on Foreign Relations “to conduct an inquiry into the military situation in the Far East and the facts surrounding the relief of General of the Army Douglas MacArthur from his assignments in that area.”<sup>52</sup> These hearings commenced on May 3 with MacArthur as the initial witness. His appearance before the committees continued during May 4 and 5, when he was followed by Secretary of Defense George C. Marshall, the Joint Chiefs of Staff, Secretary of State Dean Acheson, and other officials and military officers. The hearings consumed 43 days—almost all of May and June.<sup>53</sup> Truman allowed his senior officials and military officers to appear before the panels, but was very attentive to protecting the advice they had provided to him regarding the Korean situation.<sup>54</sup> By one account, having successfully weathered the “great debate” of a few months earlier, Truman “continued to disregard Congress in the matter of military commitments.”<sup>55</sup> Truce negotiations began at Kaesong on July 10, 1951, and were resumed at Panmunjon in October. The conflict in Korea was stalemated; negotiations for an armistice were deadlocked over the issue of forced repatriation of prisoners. Continued American involvement in Korea became a presidential campaign issue in 1952. By one estimate, the conflict

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<sup>49</sup> Josephy, *On the Hill*, p. 353.

<sup>50</sup> *Ibid*, p. 354.

<sup>51</sup> Truman, *Memoirs*, pp. 354-355, 383-384, 432-450; also see John W. Spanier, *The Truman-MacArthur Controversy and the Korean War* (Cambridge, MA: The Belknap Press of Harvard University press, 1959).

<sup>52</sup> Spanier, *The Truman-MacArthur Controversy and the Korean War*, p. 221.

<sup>53</sup> U.S. Congress, Senate Committee on Armed Services and Committee on Foreign Relations, *Military Situation in the Far East*, hearings, 82<sup>nd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1951).

<sup>54</sup> See Truman, *Memoirs*, pp. 451-454.

<sup>55</sup> Josephy, *On the Hill*, p. 354.



there contributed to public agony and frustration that reverberated back onto the domestic political scene, creating a receptive climate for demagogic exploitation by the House Committee on Un-American Activities, Senator Joseph McCarthy, and others.<sup>56</sup> Months before the armistice was signed in Panmunjon in June 1953, congressional interest in Korea had shifted to concern by many with Communists in American government and society, which would engender new controversies regarding congressional information needs.

## Vietnam Conflict

**Background.** America's military involvement in Vietnam did not begin with a formal declaration of war, nor was one ever made. Instead, the nation's commitment to Vietnam evolved over a number of years, during the presidencies of Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and Richard M. Nixon. In 1955, the U.S. government gave aid directly to the government in Saigon for the first time and agreed to train its army. A U.S. military assistance command was established in 1962, and, two years later, U.S. forces began bombing North Vietnam. The first American combat troops were deployed to South Vietnam in 1965. U.S. efforts to aid South Vietnam expanded to include Cambodia and Laos, where major offensives were carried out in 1970 and 1971, respectively. Public negotiations and secret peace talks, begun in the late 1960s, converged in the early 1970s, and culminated with the signing of the Paris peace accords on January 27, 1973. The last U.S. troops left South Vietnam on March 29, 1973, and American prisoners of war were released three days later.

Critical to understanding the relationship between the President and Congress during the Vietnam conflict are five resolutions, only one of which, the Gulf of Tonkin resolution (Johnson), dealt exclusively with the use of U.S. military forces in Vietnam. Three others addressed the use of U.S. armed forces in other areas of the world: Formosa and the Middle East (Eisenhower), and Cuba (Kennedy). The fifth resolution dealt more broadly with war powers; it was passed during the Johnson Administration and repealed during Nixon's presidency. To a certain extent, the resolutions themselves, as well as how each Administration handled Congress, offer insight into the executive-legislative relationship, including the executive's willingness to consult with Members.

**Dwight D. Eisenhower.** Following World War II, a major foreign policy goal of the United States was to contain Communism. Concerns that the loss of one country to Communists would lead to a Communist takeover in another country, and so on, fueled the nation's preoccupation with the need to thwart Communist advances whenever and wherever possible. Evidence of those intentions was found in the Chinese Communists' success in driving Chiang Kai-shek, and his fellow Nationalists, from mainland China and establishing the People's Republic of China in 1949. Chiang maintained his Nationalist regime on the island of Formosa (also known as Taiwan). The invasion of South Korea by North Korea in 1950, with the People's Republic of China aiding North Korea, was additional confirmation that its adherents were seeking to spread their influence.

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<sup>56</sup> Latham, *The Communist Controversy in Washington*, p. 393.

The departure of the Nationalists from mainland China in 1949 did not end the dispute between the two adversaries, Chiang Kai-Shek and Mao Tse-tung, and their supporters. Communist China claimed several islands located off its coast that were occupied by Nationalist forces. When the Korean War broke out, President Harry S. Truman declared that the Straits of Formosa were neutral, and ordered the U.S. Navy to blockade the area, thus preventing either party, Nationalists or Communists, from using the islands as a base for launching an attack on the other. The blockade was lifted, by President Eisenhower, on February 2, 1953. In August 1954, the Nationalists strengthened their forces on the islands of Quemoy and Matsu. Mainland China responded, in September and November, with military attacks on several of the islands. On December 2, 1954, the U.S. and Taiwan signed a mutual defense treaty.

After Communist forces had seized the island of Ichang on January 18, 1955, and appeared to be threatening to invade the Tachens, President Eisenhower turned to Congress. On January 24, he asked for a resolution that would give him the authority to use U.S. forces to protect Taiwan and the other islands. In his message to Congress, Eisenhower noted that, as Commander in Chief, he already had authority to take some action. He was sensitive, though, to the need for the President and Congress to act together.

... a suitable Congressional resolution would clearly and publicly establish the authority of the President as Commander-in-Chief to employ the armed forces of this nation promptly and effectively for the purposes indicated if in his judgment it became necessary. It would make clear the unified and serious intentions of our Government, our Congress and our people.<sup>57</sup>

One matter that Eisenhower failed to address specifically was his Administration's intentions toward Quemoy, Matsu, and other islands located off the coast of mainland China. The general language of Eisenhower's message left the door open for American intervention in areas other than Formosa (Taiwan) and the Pescadores (both of which were identified by name in the President's message):

Moreover, we must be alert to any concentration or employment of Chinese Communist forces obviously undertaken to facilitate attack upon Formosa, and be prepared to take appropriate military action.

But unhappily, the danger of armed attack directed against that area [Formosa and the Pescadores] compels us to take into account closely related localities and actions which, under current conditions, might determine the failure or the success of such an attack. The authority that may be accorded by the Congress would be used only in situations which are recognizable as parts of, or definite preliminaries to, an attack against the main positions of Formosa and the Pescadores.<sup>58</sup>

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<sup>57</sup> U.S. President (Eisenhower), "Special Message to the Congress Regarding United States Policy for the Defense of Formosa," *Public Papers of the Presidents of the United States, Dwight D. Eisenhower, 1955* (Washington : GPO, 1959), pp. 209-210.

<sup>58</sup> *Ibid.*, p. 209.

The resolution itself specified Formosa (Taiwan) and the Pescadores as areas of interest, but then referred to “related positions and territories.”

Some congressional Democrats found this language suspect. They believed that the offshore islands, with the exception of Formosa, belonged to mainland China. Also, they were concerned about the possibility that Chinese Nationalists might attempt to use the vague references to manipulate the U.S. into going to war with China. Nevertheless, the resolution, H. J. Res. 159 (84<sup>th</sup> Congress), passed both houses by wide margins, 410-3 in the House (January 25, 1955) and 85-3 in the Senate (January 28, 1955).<sup>59</sup> Although the Democrats had gained control of both Houses in the 1954 election, their leads in the House (232-203) and Senate (48-47 with one independent) were not large. Eisenhower signed P.L. 84-4 (H. J. Res. 159; 69 Stat. 7) on January 29, 1955. The Formosa Resolution authorized the President “to employ the Armed Forces of the United States as he deems necessary for the specific purpose of securing and protecting Formosa and the Pescadores against armed attacks ....” The resolution would expire when the President determined that the “peace and security of the area [was] reasonably assured.”

In 1956, the Eisenhower Administration was faced with a new challenge in a different part of the world—the Middle East. The President of Egypt, Gamal Abdel Nasser, planned to build the Aswan High Dam on the Nile River. Late in 1955, he had secured offers of loans from the United States, Britain, and the World Bank. The United States withdrew its offer on July 19, 1956, in response to, among other things, the fact that Nasser had negotiated arms deals with the Soviet bloc. Britain followed suit, as did the World Bank. Nasser responded by nationalizing the company that operated the Suez Canal. Britain and France, both of which depended on the canal for the transportation of oil and had financial interests in the canal, reacted strongly. Israel launched an offensive on October 29;<sup>60</sup> the British and the French attacked Egypt on October 31; the Soviet Union threatened, on November 5, to intervene militarily to restore peace in the region; and a cease-fire agreement was reached on November 6. While Britain and France immediately ended their military activities, the Soviet Union continued its activities for several days. The U.S. did not intervene, but it did expand its naval presence in the region before, and during, the crisis.<sup>61</sup>

Concerned about the volatility of the region, and the Soviet presence, following the Suez Canal crisis, the Administration once again determined that a resolution was necessary and approached Congress with its request. On January 5, 1957, President Eisenhower, addressing a joint session of Congress, asked for a resolution that would, among other things, authorize the United States to provide military aid and assist with economic development in the Middle East. Under the heading of military

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<sup>59</sup> Congressional Quarterly Service, *Congress and the Nation, 1945-1964* (Washington: Congressional Quarterly Service, 1965), p. 114.

<sup>60</sup> When the British and the French learned that Israel had formulated its own plans to attack Egypt, they reportedly proposed, to Israel, that their forces could enter Egypt under the guise of mediating the conflict between Egypt and Israel. (Federation of American Scientists, “Suez Crisis,” *FAS Military Analysis Network*, available at [<http://www.fas.org/man/dod-101/ops/suez.htm>], visited Apr. 15, 2002.)

<sup>61</sup> Ibid.

assistance and cooperation, Eisenhower sought to include “the employment of the armed forces of the United States....”<sup>62</sup> In his message to Congress, he clearly stated why he believed it was necessary for the President and Congress to work together:

... I deem it necessary to seek the cooperation of the Congress. Only with that cooperation can we give the reassurance needed to deter aggression.... If, contrary to my hope and expectation, a situation arose which called for the military application of the policy which I ask the Congress to join me in proclaiming, I would of course maintain hour-by-hour contact with the Congress if it were in session. And if the Congress were not in session, and if the situation had grave implications, I would, of course, at once call the Congress into special session.<sup>63</sup>

Congress, as a whole, was much less receptive to what became known as the Middle East Resolution than it had been to the Formosa Resolution. Among the reasons cited for a hesitant response on the part of Congress were that the Middle East was not considered essential to the security of the United States and that the Administration had helped to precipitate the crisis when it withdrew its offer of a loan for the Aswan High Dam and, later, did not support a British-French proposal for dealing with Nasser.<sup>64</sup> In January 1957, Secretary of State John Foster Dulles testified before the House Committee on Foreign Affairs and, in a combined session, the Senate Committees on Foreign Relations and the Armed Services.<sup>65</sup> In response to Senators’ concerns that his argument for the draft resolution was based on general, not specific, information, Dulles said: “If we have to pinpoint everything we propose to do, this program will not serve its purpose. If Congress is not willing to trust the President to the extent he asks, we can’t win this battle.”<sup>66</sup> The House of Representatives responded to Dulles’s entreaty, passing H.J.Res. 117 (85<sup>th</sup> Congress) on a 355-61 vote.<sup>67</sup> Democrats voted 118-35; Republicans 167-26. While the House passed the measure fairly quickly,<sup>68</sup> the Senate did not. Instead, the Committees on

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<sup>62</sup> U.S. President (Eisenhower), “Special Message to the Congress on the Situation in the Middle East,” *Public Papers of the Presidents of the United States, Dwight D. Eisenhower, 1957* (Washington: GPO, 1958), p. 13.

<sup>63</sup> *Ibid.*, pp. 11, 15.

<sup>64</sup> Congressional Quarterly Service, *Congress and the Nation, 1945-1964*, p. 120.

<sup>65</sup> See U.S. Congress, House Committee on Foreign Affairs, *Economic and Military Cooperation with Nations in the General Area of the Middle East*, hearings on H. J. Res. 117, 85<sup>th</sup> Cong., 1<sup>st</sup> sess., Jan. 7-10, 15-17, 22, 1957 (Washington: GPO, 1957); and U.S. Congress, Senate Committees on Foreign Relations and the Armed Services, *The President’s Proposal on the Middle East*, hearings on S.J.Res. 19 and H.J.Res. 117, 85<sup>th</sup> Cong., 1<sup>st</sup> sess., Jan. 14, 15, 25, 28-30, Feb. 1, 4, 1957 (Washington: GPO, 1957).

<sup>66</sup> Congressional Quarterly Service, *Congress and the Nation, 1945-1964*, p. 120.

<sup>67</sup> See U.S. Congress, House Committee on Foreign Affairs, *Authorizing the President to Undertake Economic and Military Cooperation with Nations in the General Area of the Middle East*, report to accompany H.J.Res. 117, 85<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 85-2 (Washington: GPO, 1957).

<sup>68</sup> Referring to H.J.Res. 117, Representative James Roosevelt said “that rarely had there been (continued...) ”

Foreign Relations and the Armed Services, meeting jointly,<sup>69</sup> voted 30-0 “for a complete review of U.S. policy in the Middle East since 1946.”<sup>70</sup> Eventually, the two committees reported the resolution after having changed some of the language in the Administration’s draft.<sup>71</sup> Specifically, the resolution was amended to say that the United States would be “‘prepared’ to use armed forces ‘if the President determines the necessity thereof ....’”<sup>72</sup> After 12 days of sporadic debate on the measure, the Senate passed the resolution, as amended, by a vote of 72-19 on March 5 (Democrats 30-16; Republicans 42-3). The House passed the amended version, on March 7, 1957, by 350-60 vote. President Eisenhower signed P.L. 85-7 (H.J.Res. 117; 71 Stat. 5) on March 9, 1957.

In the late 1940s and early 1950s, two forces were fighting for control of northern Vietnam. The French, who had taken control of Vietnam, and other parts of Southeast Asia, in the 19<sup>th</sup> century, were locked in a war with Ho Chi Minh and his fellow indigenous Communists (who were also referred to as Viet Minh). While preparations were underway, in late 1953, for peace talks, the French military decided to launch a major attack, from the village of Dien Bien Phu, on Viet Minh forces. At the same time that the French were fortifying their military facilities and positions in and around Dien Bien Phu, the Communists were positioning their forces around the village. Viet Minh forces attacked on March 13, 1954, overrunning French bases located on the perimeter of Dien Bien Phu, which allowed them, in turn, to direct massive artillery fire on the village and the French forces stationed there.

Until their defeat on May 7, the French requested, on several occasions, military assistance from the United States. While Eisenhower and his senior advisers believed that French forces needed military support if they were to succeed in thwarting the Communists, the Administration preferred multilateral action. Speaking at the Overseas Press Club on March 29, 1954, Secretary of State Dulles presented the Administration’s concept of united action.<sup>73</sup>

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<sup>68</sup> (...continued)

a bill ‘which has so few friends that will get so many votes.’ (Congressional Quarterly Service, *Congress and the Nation*, 1945-1964, p. 120.)

<sup>69</sup> The Senate entered into an agreement on January 23, 1957 that created a joint committee, consisting of the Committees on Foreign Relations and the Armed Services, for the purposes of considering and studying S.J.Res. 19 and H.J.Res. 117.

<sup>70</sup> Congressional Quarterly Service, *Congress and the Nation*, 1945-1964, p. 120.

<sup>71</sup> See U.S. Congress, Senate Committees on Foreign Relations and Armed Services (acting jointly), *To Promote Peace and Stability in the Middle East*, report to accompany S.J.Res. 19, 85<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 85-70. (Note: The bill that was passed was H.J.Res. 117. However, the language of S.J.Res. 19 was substituted for the language of the House joint resolution.)

<sup>72</sup> Congressional Quarterly Service, *Congress and the Nation*, 1945-1964, p. 120.

<sup>73</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1945-1961*, part I, committee print prepared by the Congressional Research Service, Library of Congress, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Prt. 98-185 (Washington: GPO, 1984), p. 176.

In the week leading up to Dulles's speech, Administration officials consulted, on several occasions, with Members of Congress on the notion of united action. The record suggests that the President, Secretary Dulles, and Admiral Arthur W. Radford, chairman of the Joint Chiefs of Staff, made the decision, on March 21, 1954, to pursue a multilateral approach regarding Southeast Asia.<sup>74</sup> The next morning, Eisenhower, Dulles, and Radford met with Republican congressional leaders. Dulles briefed them on the Administration's concept of united action and, later, he drafted a memorandum on this matter, which "was approved by Eisenhower and by congressional leaders of both parties."<sup>75</sup> Other Members, including congressional leaders and members of the Senate Committee on Foreign Relations and members of the House Committee on Foreign Affairs, also were consulted by Dulles prior to March 29.<sup>76</sup> At a meeting with Republican congressional leaders on the same day, the President informed them of several options he was considering in the event the situation at Dien Bien Phu deteriorated rapidly. Eisenhower said:

I am bringing this up at this time because at any time within the space of forty-eight hours, it might be necessary to move into the battle of Dien Bien Phu in order to keep it from going against us, and in that case I will be calling in the Democrats as well as our Republican leaders to inform them of the actions we're taking.<sup>77</sup>

As the situation grew worse for the French troops, with a successful assault by the Viet Minh on March 30 and April 1, the Administration's discussions on the question of providing military support were infused with a sense of urgency. When the President, Secretary Dulles, Secretary of Defense Charles E. Wilson, and Admiral Radford gathered on April 2, 1954, Dulles presented a draft resolution. Eisenhower approved of the resolution, but thought that the proper way to approach Congress was "to develop first the thinking of congressional leaders" before showing them a resolution already drafted by the Administration.<sup>78</sup> Dulles concurred, adding that he prepared the draft to confirm that they agreed on the Administration's course of action. Unlike the Gulf of Tonkin resolution, which would be passed in 1964 and which confirmed the President's authority to take action, Dulles's draft had Congress authorizing the President to act. The draft also contained this language: "This Resolution shall not derogate from the authority of the Congress to declare war and shall terminate on June 30, 1955, or prior thereto if the Congress by concurrent resolution shall so determine."<sup>79</sup>

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Richard Nixon, *R.N.: The Memoirs of Richard Nixon* (New York: Grosset and Dunlap, 1978), p. 151, quoted in *ibid.*, p. 180.

<sup>78</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1945-1961*, part I, p. 184.

<sup>79</sup> U.S. Department of State, *Foreign Relations of the United States, 1952-1954*, vol. XIII, part 1, Neal H. Petersen, ed. (Washington: GPO, 1982), p. 1212, quoted in *ibid.*, p. 185.

On April 3, 1954, Administration officials and congressional leaders met at the Department of State. The thrust of the meeting was to ask Congress to support the President in the event air and sea power were necessary. Admiral Radford described the military situation, while Secretary Dulles explained the significance of Indochina. All eight Members at the meeting agreed that the U.S. ought to obtain commitments from its allies for political and military support. Dulles replied that he would try to obtain commitments from Britain and other countries, but did not broach the subject of a congressional resolution. The congressional leadership's "reaction appears to have prevented the realization of Dulles's hope, possibly even his intention, that the group would agree to support a congressional resolution authorizing the President to use air and naval forces, in order to strengthen the U.S. negotiating position ...."<sup>80</sup> A benefit for the President was that the Members' position strengthened his own hand within the Administration. "In opposing military action which might lead to 'another Korea,' congressional leaders reinforced the President's own desire to avoid direct intervention with U.S. forces, thus helping to counter the arguments of Radford and others who favored military action."<sup>81</sup>

Administration officials continued to meet with Members of Congress, even as the situation in Dien Bien Phu worsened. Under Secretary of State Bedell Smith met with members of both congressional Far East subcommittees on April 26. Participants discussed the proposed resolution that would authorize the President to employ air and sea power. Another briefing was held, on May 5, for congressional leaders and chairmen and ranking members of the Senate and House Armed Services Committees. In his presentation, Dulles reviewed recent events and described the Administration's position on U.S. intervention, the need to establish a defense arrangement in Southeast Asia, and the importance of Britain and France.<sup>82</sup> Two days later, Dien Bien Phu fell to the Viet Minh.

Eisenhower's philosophy of working in concert with Congress did not carry over into covert operations. He did not believe that he needed congressional approval for clandestine activities.<sup>83</sup> Eisenhower approved covert operations in Iran and Guatemala without seeking legislative authorization, and the planning for the Bay of Pigs invasion of Cuba began during his tenure.<sup>84</sup>

**John F. Kennedy.** During his relatively brief time in office, President Kennedy expanded American involvement in Vietnam in a number of ways, moving the United States from an advisory capacity to partner status and expanding its

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<sup>80</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1945-1961*, part 1, p. 194.

<sup>81</sup> *Ibid.*, p. 195.

<sup>82</sup> *Ibid.*, pp. 222-223.

<sup>83</sup> Louis Fisher, *Presidential War Power* (Lawrence, KS: University Press of Kansas, 1995), p. 104.

<sup>84</sup> *Ibid.*, p. 169.

military activities. Within six months of taking office, Kennedy decided that “the struggle against Communism” in Vietnam would be a “joint campaign.”<sup>85</sup>

This expanded commitment by the President of the United States, with the acquiescence of Congress, raised the level and enlarged the scope of existing U.S. commitments to Vietnam. Previously the U.S. had taken the position that it was assisting Vietnam in its efforts to defend itself. Although in practice the United States was deeply involved in activities in Vietnam, it had never taken the position that this was a joint effort by the two countries—a concept with many implications for the role of the United States and the role of Vietnam, as well as for the relationship between the U.S. and Vietnam.<sup>86</sup>

Under President Kennedy, the United States initiated the strategic hamlet program, supported covert operations, and strengthened its command structure in South Vietnam. Kennedy formed the Military Assistance Command Vietnam (MACV), which was activated on February 8, 1962, and eventually replaced the Military Assistance Advisory Group-Vietnam (MAAG-V) that Eisenhower had established in 1955. The MACV was needed to manage expanding U.S. military operations in South Vietnam.<sup>87</sup>

A significant component of this expansion was an increase in the number of U.S. military advisers, from approximately 700 to nearly 15,000 by the end of 1963, and their participation in combat operations. The U.S. Air Force also was used for combat operations. On October 11, 1961, the President authorized the deployment of an Air Force unit to South Vietnam. Stationed north of Saigon, at Bien Hoa Air Base, the 4400<sup>th</sup> Combat Crew Training Squadron flew 229 combat missions in support of South Vietnamese ground troops by January 31, 1962.<sup>88</sup> The flights were authorized as long as a Vietnamese crew member was on board; and the bombers were redesignated RB-26, for reconnaissance bomber, because the 1954 Geneva Conventions prohibited the introduction of bombers to Indochina.<sup>89</sup>

In seizing the initiative on Vietnam, and other foreign policy issues and operations, Kennedy was aided to some extent by Congress. Generally, Members agreed with U.S. policy in Vietnam. Another factor was fairly widespread agreement among Members that the President was best-suited for the job of directing foreign

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<sup>85</sup> Dept. of Defense, ed., *Pentagon Papers*, book 11, (Washington: GPO, 1971), p. 132, quoted in U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, committee print prepared by the Congressional Research Service, Library of Congress, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Prt. 98-185 (Washington: GPO, 1984), p. 42.

<sup>86</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, p. 43.

<sup>87</sup> Daniel T. Bailey, “Military Assistance Command, Vietnam (MACV),” in Stanley I. Kutler, ed., *Encyclopedia of the Vietnam War* (New York: Charles Scribner’s Sons, an imprint of Simon and Schuster Macmillan, 1996), p. 336.

<sup>88</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, p. 108.

<sup>89</sup> *Ibid.*, p. 71.



policy, and, as a corollary, that the President needed to have sufficient authority to conduct foreign policy. In a speech on June 3, 1962, Senator Mike Mansfield (D-MT), in referring to recent U.S. military operations in Thailand and Vietnam, said:

Both steps represent a deepening of an already very deep involvement on the Southeast Asia mainland. In this, as in all cases of foreign policy and military command, the responsibility for the direction of the Nation's course rests with the President.<sup>90</sup>

Senator J. William Fulbright (D-AR), in an article published in 1961, explained why Presidents ought to have adequate authority to conduct foreign affairs. In the article,

Fulbright took the position that "... for the existing requirements of American foreign policy we have hobbled the President by too niggardly a grant of power.... The overriding problem of inadequate Presidential authority in foreign affairs," Fulbright added, "derives ... from the 'checks and balances' of Congressional authority in foreign relations." Fulbright questioned "... whether in the face of the harsh necessities of the 1960's we can afford the luxury of 18<sup>th</sup> century procedures of measured deliberation. It is highly unlikely that we can successfully execute a long-range program for the taming, or containing of today's aggressive and revolutionary forces by continuing to leave vast and vital decision-making powers in the hands of a decentralized, independent-minded and largely parochial-minded body of legislators.... I submit that the price of democratic survival in a world of aggressive totalitarianism is to give up some of the democratic luxuries of the past. We should do so with no illusions as to the reasons for its necessity. It is distasteful and dangerous to vest the executive with powers unchecked and unbalanced. My question is whether we have any choice but to do so."<sup>91</sup>

Mansfield's and Fulbright's comments were indicative, generally, of Congress's view of its role and the executive's role during the early stages of the Vietnam involvement, a view that would evolve considerably as involvement deepened. Accustomed to serving as a "silent partner," willing to defer to the expertise of military professionals and intelligence personnel, and unable to observe U.S. military operations and activities for themselves, Members seemed to be content to allow the President and his senior advisers to oversee the war.<sup>92</sup>

Helping to shore up South Vietnam militarily and politically was important to the Kennedy Administration, but an even more pressing problem was Cuba. The failed invasion of Cuba at the Bay of Pigs in April 1961 was one of a series of events and public statements that served to heighten the tension between the U.S. and Cuba

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<sup>90</sup> Sen. Mike Mansfield, "Interests and Policies in Southeast Asia – Commencement Address by Senator Mansfield at Michigan State University," reprinted, *Congressional Record*, vol. 108, June 11, 1962, p. 10048, quoted in *ibid.*, p. 127.

<sup>91</sup> J. William Fulbright, "American Foreign Policy in the 20<sup>th</sup> Century under an 18<sup>th</sup>-Century Constitution," *Cornell Law Quarterly*, vol. 47, Fall 1961, pp. 2, 5, 7, quoted in *ibid.*, pp. 127-128.

<sup>92</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, p. 127.

following its establishment of diplomatic relations with the Soviet Union on May 7, 1960. While Robert F. Kennedy, in his capacity as Attorney General, sent a memorandum to the President on April 19, 1961, warning of the possibility that the Soviet Union might station ballistic missiles in Cuba, it was not until mid-1962 that the U.S. observed suspicious activities and shipments from the Soviets. President Kennedy responded at a news conference on September 13, 1962. Rather than request a joint resolution from Congress authorizing him to take action during the Cuban missile crisis, Kennedy opted to act unilaterally. Asserting his authority as Commander in Chief, Kennedy said: “I have full authority now to take such action’ militarily against Cuba.”<sup>93</sup> When asked whether, in light of his claim to have the constitutional authority necessary to act unilaterally, there was any reason for either or both chambers to pass a resolution authorizing him to act, he replied:

No. I think the Members of Congress would, speaking as they do with a particular responsibility—I think it would be useful, if they desired to do so, for them to express their view. And as I’ve seen the resolutions which have been discussed—a resolution which I think Senator [Mike] Mansfield [D-Mont.] introduced and which Chairman [Carl] Vinson [D-Ga.] introduced in the House—and I would think that—I’d be very glad to have those resolutions passed if that should be the desire of the Congress.<sup>94</sup>

On October 3, 1962, the President signed a resolution on Cuba, S.J.Res. 230 (P.L. 87-733; 76 Stat. 697), but it did not address the issue of presidential authority.<sup>95</sup> Instead of indicating what the President was authorized to do, the operative portion of the resolution began by stating “That the United States is determined ....” The Senate vote was 86-1; the House, 384-7.<sup>96</sup> The lack of serious opposition to the President’s assertion of authority apparently was a sign of deference. Senator Bourke Hickenlooper (R-IA) remarked: “Basically the Executive has the responsibility for and is in charge of foreign policy operations.”<sup>97</sup>

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<sup>93</sup> Fisher, *Presidential War Power*, p. 111.

<sup>94</sup> U.S. President (Kennedy), “The President’s News Conference of September 13, 1962,” *Public Papers of the Presidents of the United States, John F. Kennedy, 1962* (Washington: GPO, 1963), p. 679, quoted in *ibid*.

<sup>95</sup> One week later, Congress passed a resolution on Berlin. H.Con.Res. 570 declared “that the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of [United States, British, and French rights in Berlin] by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin with respect to their resolve for freedom.” (*Journal of the House of Representatives of the United States*, 87<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1962), p. 921.) Unlike the Cuba joint resolution, the concurrent resolution was not submitted to the President for signature and would not have the force and effect of law.

<sup>96</sup> Consideration and passage of S.J.Res. 230 may be found in: “U.S. Policy with Respect to Cuba” and “Expressing the Determination of the United States with Respect to the Situation in Cuba,” *Congressional Record*, vol. 108, Sept. 20 and Sept. 26, 1962, pp. 20024-20025, 20026-20058, 20863-20911.

<sup>97</sup> Sen. Bourke Hickenlooper, “U.S. Policy with Respect to Cuba,” remarks in the Senate, *Congressional Record*, vol. 108, Sept. 20, 1962, p. 20029, quoted in Fisher, *Presidential* (continued...)

In late October, the Administration took steps to interdict offensive weapons headed to Cuba. The idea of calling Congress back to Washington, DC, received only brief consideration. Former Secretary of State Dean Acheson, a member of the Kennedy Administration's team that considered various options, noted that "this was no time ... to worry about legal formalities."<sup>98</sup> Kennedy used the Cuba resolution to legitimize his decisions by stating that they were based on "the authority entrusted to me by the Constitution as endorsed by the resolution of the Congress."<sup>99</sup>

The assassination of Kennedy on November 22, 1963, and the inauguration of Lyndon B. Johnson did not change United States policy toward Vietnam. Three days after Kennedy's death, President Johnson reaffirmed, in National Security Action Memorandum (NSAM) 273, that it was the goal of the United States to conquer Communist forces in Southeast Asia.

**Lyndon B. Johnson.** Upon taking office, Johnson inherited a noticeably deteriorating situation in Vietnam. Three weeks before Kennedy was killed, Ngo Dinh Diem, prime minister of South Vietnam, was overthrown and murdered by several of his government's high-ranking military officers. Demonstrations in South Vietnam against Diem, and indications that he was considering entering into negotiations with the Communists, were cause for concern among officials in the Kennedy Administration. In all likelihood, the coup was seen by the Administration as an opportunity for South Vietnam to establish a government more willing and better equipped to repel Communist advances. Any improvement was short-lived, however. Reports that the new government was faltering, that the strategic hamlet program was not as effective as expected, and that the Communists were increasing their pressure on Vietnam, as well as Laos, prompted Johnson to send his Secretary of Defense, Robert McNamara, and others, to Vietnam in December 1963 to observe and report on the situation. McNamara's report portrayed a country that was, or soon would be, vulnerable to Communist takeover. Subsequent visits and additional reports yielded similarly bleak assessments.

As early as February 13, 1964, the possibility of asking Congress for a resolution on the use of U.S. military forces in Vietnam was under consideration within the Administration. In a memorandum to Secretary of State Dean Rusk, Walt W. Rostow, director of the State Department's Policy Planning Council, wrote that some discussions had been held on the desirability of asking Congress for a resolution.

"Even this early in the Johnson administration," Rostow said subsequently, "word had gotten back to the bureaucracy that Johnson disapproved of Truman's failure to seek a congressional resolution in the Korean War. We understood that,

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<sup>97</sup> (...continued)

*War Power*, p. 112.

<sup>98</sup> Elie Abel, *The Missiles of October: The Story of the Cuban Missile Crisis* (London: MacGibbon and Kee, 1969), p. 84, quoted in *ibid.*, p. 113.

<sup>99</sup> U.S. President (Kennedy), "Radio and Television Report to the American People on the Soviet Arms Buildup in Cuba," *Public Papers of the Presidents of the United States, John F. Kennedy, 1962* (Washington: GPO, 1963), p. 807, quoted in *ibid.*

should the occasion arise, he intended to be governed by Eisenhower's precedent in the Formosa and Middle East resolutions, where broad congressional support was sought before policies that might lead to military confrontations were carried out."<sup>100</sup>

On May 20, 1964, Johnson requested that a working group develop plans for a congressional resolution. In reporting to Johnson on the group's progress, McGeorge Bundy, the President's national security adviser, said that the team working with Under Secretary of State George W. Ball was "drafting alternative forms of a congressional resolution so as to give you a full range of choice with respect to the way in which you would seek Congressional validation of wider action. The preliminary consensus is that such a resolution is essential before we act against North Vietnam, but that it should be sufficiently general in form not to commit you to any particular action ahead of time."<sup>101</sup>

From June 1 through June 3, 1964, top U.S. officials from Washington and Saigon convened in Honolulu to discuss how to proceed in Vietnam and Laos, and how to prepare the American public for an expanded war.<sup>102</sup> A State Department cable that provided guidance for the meeting stated "that the President was consulting closely with congressional leaders, and that he 'will wish Congress associated with him on any steps which carry with them substantial acts and risks of escalation.'"<sup>103</sup>

Discussion within the Administration about the desirability and timing of a proposed congressional resolution continued. In a paper he prepared for a June 10 interdepartmental meeting, William Bundy, Assistant Secretary of State for East Asian and Pacific Affairs, suggested that, "in the absence of acute emergency," the Administration could request a resolution within the next three weeks. September and November were possibilities, too, Bundy wrote, should the situation change drastically.<sup>104</sup> However, he recommended that the Administration wait, which also was the recommendation that came out of the meeting, as noted in a memorandum from McGeorge Bundy to the President: "... we do not now recommend an attempt to get an early resolution. We think the risks outweigh the advantages, unless and until we have a firm decision to take more drastic action than we currently plan."<sup>105</sup> However, yet another memorandum from William Bundy, dated June 12, advised

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<sup>100</sup> W. W. Rostow, *The Diffusion of Power* (New York: Macmillan, 1972), p. 505, quoted in U.S. Congress, Senate Committee on Foreign Relations, U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, p. 231.

<sup>101</sup> Johnson Library, NSF Aides File, McGeorge Bundy Memos for the President, quoted in *ibid.*, pp. 254-255.

<sup>102</sup> *Ibid.*, p. 261.

<sup>103</sup> *Pentagon Papers*, [Sen. Maurice Robert (Mike)] Gravel edition, vol. III (Boston: Beacon Press, 1971), p. 73, quoted in *ibid.*

<sup>104</sup> William Bundy, "Alternative Public Positions for U.S. on Southeast Asia for the Period July 1-November 15," Johnson Library, NSC History File, Gulf of Tonkin Attacks, quoted in *ibid.*, p. 268.

<sup>105</sup> Johnson Library, NSF Aides File, McGeorge Bundy Memos for President, quoted in *ibid.*

that a resolution be sent to Congress the week of June 22 (neither July nor August was suitable because of the Republican and Democratic party conventions). In his memorandum, Bundy wrote:

It may be argued that a Congressional Resolution under present circumstances faces the serious difficulty that there is no drastic change in the situation to point to. The opposing argument is that we might well not have such a *drastic* change even later in the summer and yet conclude—either because of the Polish consultations [meetings then being planned for negotiating a new settlement in Laos] or because of the South Viet-Nam situation—that we had to act.<sup>106</sup>

Efforts to develop a resolution, and to determine when it should be proposed, were suspended in mid-June. A group of senior National Security Council officials, meeting on June 15, agreed with a White House memorandum that stated a resolution was not necessary at the time. In his account of this determination, William Bundy wrote: “... in the end the case against the resolution seemed overwhelming ... the general consensus was that in the absence of a considered decision for a sustained course of action, the need for a resolution was impossible to explain adequately to the Congress and the public.”<sup>107</sup> Later that summer, events in the Gulf of Tonkin provided the Johnson Administration with a rationale for proposing a congressional resolution.

The following is a summary of events that served as the catalyst for the Administration’s effort to secure the passage of a resolution in 1964. This account reflects the views of some that the Administration was not completely forthcoming with Congress in its portrayal of what occurred, and why, in the Gulf of Tonkin in August 1964.

In June and July 1964, the United States was conducting both overt and covert operations in Southeast Asia. Two of the covert operations were 34-A raids, which were named for OPLAN 34-A and had been put into effect in February; and DE SOTO patrols, which began in mid-June. Commandos from South Vietnam (and other countries) carried out 34-A raids, using high speed boats to attack the coast of North Vietnam. These personnel had been recruited and were managed by the Central Intelligence Agency (CIA). DE SOTO patrols were intelligence gathering missions conducted by the U.S. Navy off the coast of North Vietnam. They were also intended to be a show of force.

On the night of July 30, 1964, 34-A boats attacked two North Vietnamese islands in the Gulf of Tonkin. On July 31, the U.S.S. *Maddox* was headed to the same area to conduct a DE SOTO patrol. The *Maddox* was attacked by three North Vietnamese torpedo boats on August 2. It returned fire, as did aircraft from the U.S.S. *Ticonderoga*. “Though some of the President’s advisers urged an immediate

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<sup>106</sup> William Bundy, “Memorandum on the Southeast Asia Situation: Probable Developments and the Case for a Congressional Resolution,” *Pentagon Papers*, Gravel ed., vol. III, p. 180, quoted in *ibid.*, p. 270 (emphasis in original).

<sup>107</sup> William Bundy, unpublished manuscript, written in 1970-1972, ch. 13, p. 22, quoted in *ibid.*, p. 274.

retaliatory move,” said George W. Ball, Under Secretary of State, “the President wished for an even stronger record. So, rather than keeping our ships out of this now established danger zone, the President approved sending both the *Maddox* and the destroyer *C. Turner Joy* back into the Gulf.”<sup>108</sup> On August 3, the *C. Turner Joy* joined the *Maddox*.

Following a meeting with the President, McNamara, and General Earle G. Wheeler, chairman of the Joint Chiefs of Staff, during the afternoon of August 3, Secretary of State Rusk sent a cable to Maxwell Taylor, U.S. ambassador to Vietnam, informing him that 34-A operations had additional targets.

[Rusk] also told Taylor, contrary to the denials of the executive branch is [sic] its discussions with Congress and in its public statements, that there was, indeed, a direct connection between the 34-A operations and the North Vietnamese attack on the *Maddox*, and that the attack on the *Maddox*, rather than being unprovoked, was directly related to the 34-A raids. This is what Rusk’s cable said: ‘We believe that present OPLAN 34A activities are beginning to rattle Hanoi, and MADDUX incident is directly related to their efforts to resist these activities .... We have no intention of yielding to pressure.’<sup>109</sup>

On the night of August 3, 34-A raiders attacked the coast of North Vietnam again. On August 4, Commander John J. Herrick, who was on board the *Maddox*, reported that both Navy ships were under “continuous torpedo attack.” Several hours later, Herrick sent another message, in which he expressed his doubts that there had been an attack on August 4, citing poor weather, overeager sonarmen, and lack of sightings, and recommended a more thorough assessment of events before responding.<sup>110</sup>

Efforts to determine whether the Navy ships had been attacked on August 4 continued for some time, even as the Administration pressed on with its plans for a congressional resolution. A four-person team from the Department of Defense (DOD), sent on August 9 to investigate the incident, concluded an attack had occurred. However, Navy pilots stationed on board the *Ticonderoga* gave conflicting reports; two pilots apparently confirmed an attack had taken place while a third pilot disputed there had been a torpedo attack.<sup>111</sup> The deputy director of the Central Intelligence Agency, Ray S. Cline, after reviewing the evidence, concluded, “within about three days after the incident” that an attack probably had not occurred.<sup>112</sup>

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<sup>108</sup> George W. Ball, *The Past Has Another Pattern* (New York: Norton, 1982), p. 379, quoted in *ibid.*, p. 286.

<sup>109</sup> Johnson Library, NSF Country File, Vietnam, Washington to Saigon 336, Aug. 3, 1964, quoted in *ibid.*, pp. 286-287.

<sup>110</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part I, pp. 289-290.

<sup>111</sup> *Ibid.*, pp. 297-298.

<sup>112</sup> *Ibid.*, p. 298.

While McNamara and military officials were trying to confirm that a second attack had occurred, Abram Chayes, legal adviser for the State Department, and Ball were drafting, on August 4, a congressional resolution. According to Chayes,

The main thing ... that Ball wanted me to deal with, ... was this question of Executive-Congressional relationships.... The whole problem ... was how do you get a resolution without acknowledging that Congress had any authority in this?... I didn't look at whatever the evidence was.... It was simply that he [Ball] wanted me to look at the resolution and make sure that we're not giving away any part of the President's power in this resolution. And so I spent ... a couple of hours, talking about the resolution, going over it and making sure that it didn't go beyond the earlier resolutions in the acknowledgment of a requirement of congressional participation.<sup>113</sup>

On the evening of August 4, Johnson, Rusk, McNamara, McCone, and Wheeler met with congressional leaders and committee chairmen and ranking members. Johnson offered an account of the attack and informed the Congressmen that he already had ordered a retaliatory strike and would address the nation later in the evening. Only Senator Mansfield opposed Johnson's decision, although when the President asked each Member to state his position on a congressional resolution, all indicated they would support the resolution.<sup>114</sup>

In a televised address the night of August 4, President Johnson announced that the U.S. would retaliate. The next day, aircraft from the *Ticonderoga* and the *Constellation* attacked North Vietnamese torpedo boats and support facilities along the coast. Though immediate efforts to determine what had taken place in the Gulf of Tonkin, with an eye toward confirming that two U.S. Navy ships had been attacked by North Vietnamese, continued for several days, Johnson was adamant that North Vietnamese forces had attacked "United States ships on the high seas in the Gulf of Tonkin," and he announced that the U.S. would respond with air strikes against North Vietnamese torpedo boat bases and supply depots.<sup>115</sup>

On August 5, the Administration sent a draft resolution to Congress. The resolution did not meet with serious opposition in either chamber. The urge to act apparently was the predominant motive in the House and is reflected in Representative Dante B. Fascell's (D-FL) recollections:

My own impression of what happened at that time was that most everybody said, well, the President wants this power and he needs to have it. It had relatively little to do with the so-called incident. I don't know why so much stress has been made on whether or not there was an incident or whether or not the President was deceitful or whatever.... The President needed the authority. Who cared about

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<sup>113</sup> CRS Interview with Abram Chayes, Oct. 13, 1978, quoted in *ibid.*, p. 293.

<sup>114</sup> *Ibid.*, pp. 294-295.

<sup>115</sup> U.S. President (Johnson), "Radio and Television Report to the American People Following Renewed Aggression in the Gulf of Tonkin," *Public Papers of the Presidents of the United States, Lyndon B. Johnson, 1963-64*, vol. II (Washington: GPO, 1965), p. 927, quoted in *ibid.*, p. 297.

the facts of the so-called incident that would trigger this authority? So the resolution was just hammered right on through by everybody.<sup>116</sup>

Senator Charles Mathias (R-MD), in reviewing how readily Congress accepted the Administration's draft resolution, focused on historical precedence and success.

What we were familiar with was a pattern of practice that had existed since the end of World War II, whereby the United States, by merely passing a resolution of the Congress, could bring about certain dramatic events in the world.... So I think we were, to some extent, the victims of success, in dealing with the Tonkin Gulf Resolution. It had worked so well in those previous situations that, speaking for myself, I think I was over-confident that it would work again, and that merely by enacting a resolution which seemed, at least, to show a high degree of national unity, that we could in some way dissipate the forces which we at that moment, saw as a threat.<sup>117</sup>

Deputy Attorney General Nicholas deB. Katzenbach offered the upcoming presidential election as another factor in congressional Democrats' decisions to support the resolution.<sup>118</sup> With his opponent, Senator Barry Goldwater, running as a "hawk," President Johnson needed to demonstrate his commitment and resolve in dealing with the North Vietnamese.<sup>119</sup>

While some Senators were apprehensive about the resolution and its implications, only one, Senator Wayne Morse (D-OR), was a persistent critic. He maintained that the United States had engaged in provocative acts; he questioned the constitutionality of the resolution; and he objected to using American forces to aid governments unworthy (i.e., dictatorships, fascist regimes, monarchies) of American support.<sup>120</sup>

The Senate passed H.J.Res. 1145 by a vote of 88-2. The vote in the House had been unanimous (416-0) in favor of the resolution. Passed as drafted by the White House, with only one minor change, the joint resolution (P.L. 88-408; 78 Stat. 384) was signed by the President on August 10, 1964. Unlike the Formosa Resolution, in which Congress authorized the President to use the armed forces, the Gulf of Tonkin resolution stated that Congress "approve[d] and support[ed] the determination of the President, as Commander in Chief, to take all necessary measures ..." which included the use of armed force. Expiration of the resolution was contingent upon the President's determination that the peace and security of Southeast Asia had been "reasonably assured."

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<sup>116</sup> CRS Interview with Dante Fascell, Feb. 23, 1979, quoted in *ibid.*, pp. 307-308.

<sup>117</sup> CRS interview with Sen. Charles Mathias, Jan. 25, 1979, quoted in *ibid.*, p. 322.

<sup>118</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part I, p. 308.

<sup>119</sup> *Ibid.*, p. 357.

<sup>120</sup> *Ibid.*, pp. 320-321.



Growing dissatisfaction in Congress with the Gulf of Tonkin Resolution led to its repeal in 1970.<sup>121</sup> The beginning of the end for the resolution may have been triggered by Johnson's use of it in 1965 to expand the war. In 1966, Senator Morse offered an amendment to repeal it. In 1967, approximately 25 Republicans in the House asked for hearings to consider the possibility of modifying or replacing the resolution. In that same year, the Senate Committee on Foreign Relations held hearings on a national commitments resolution.<sup>122</sup> The committee report included this assessment of the resolution and the role of Congress in its passage:

The Gulf of Tonkin resolution represents the extreme point in the process of constitutional erosion that began in the first year of this century. Couched in broad terms, the resolution constitutes an acknowledgment of virtually unlimited Presidential control of the Armed Forces. It is of more than historical importance that the Congress now ask itself why it was prepared to acquiesce in the transfer to the executive of a power which, beyond any doubt, was intended by the Constitution to be exercised by Congress.<sup>123</sup>

The report on national commitments from the Committee on Foreign Relations also suggested why Congress acted as it did in 1964.<sup>124</sup> There was a sense of urgency. Congress believed it was demonstrating its unity with, and support for, the President by passing the resolution. The nation's leaders and the public focused on national security, yet paid little attention to the war power. The committee also stated that,

... in the case of the Gulf of Tonkin resolution, there was a discrepancy between the language of the resolution and the intent of Congress. Although the language of the resolution lends itself to the interpretation that Congress was consenting in advance to a full-scale war in Asia should the President think it necessary, that was not the expectation of Congress at the time. In adopting the resolution Congress was closer to believing that it was helping to *prevent* a large-scale war by taking a firm stand than it was laying the legal basis for the conduct of such a war.

The committee concluded that in adopting a resolution with such ... sweeping language ... Congress committed the error of making a *personal* judgment as to how President Johnson would implement the resolution when it had a responsibility to make an *institutional* judgment, first, as to what *any* President would do with so great an acknowledgment of power, and, second, as to whether, under the Constitution, Congress had the right to grant or concede the authority in question.<sup>125</sup>

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<sup>121</sup> Ibid., p. 333.

<sup>122</sup> Ibid., p. 335.

<sup>123</sup> U.S. Congress, Senate Committee on Foreign Relations, *National Commitments*, report to accompany S.Res. 187, 90<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 90-797 (Washington: GPO, 1967), p. 20.

<sup>124</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part I, p. 335.

<sup>125</sup> U.S. Congress, Senate Committee on Foreign Relations, *National Commitments*, S.Rept. 90-797, p. 21.

President Johnson lost one of his strongest supporters on Vietnam policy, Senator Fulbright, through his handling of the Dominican Republic crisis in 1965. On April 24, 1965, the capital of the Dominican Republic, Santo Domingo, was the scene of a rebellion. Johnson sent U.S. armed forces to the Dominican Republic on April 28. Their mission was to evacuate American citizens and other nationals. Initially, 400 Marines were deployed. By May 9, the U.S. had deployed nearly 19,000 troops.<sup>126</sup> The Johnson Administration justified the large number of troops by expressing its concern about a Communist takeover of the Dominican Republic,<sup>127</sup> but it did not ask for, or broach the subject of, a congressional resolution.

Once the situation in the Dominican Republic had stabilized, Senator Fulbright, and other critics in Congress, questioned what the Administration had done. Of particular concern was the President's use of war powers.<sup>128</sup> Hearings were held for nine days in fall 1965, but no committee report was issued. Fulbright's complaints, which were shared by others, were: "the change in emphasis from saving American lives to preventing a Communist takeover; the Administration's faulty evaluation of and overreaction to the threat of Communism; poor intelligence and advice from governmental officials on the scene; and, not least, the Administration's lack of candor with the American public."<sup>129</sup> A staunch supporter of Johnson who played a crucial role in the passage of the Gulf of Tonkin resolution, Fulbright set out on a different path after Johnson's intervention in the Dominican Republic.<sup>130</sup>

Though eligible for reelection, Johnson declined to run again. A combination of factors, including growing criticism of the war, led him to announce early in 1968 that he would not seek reelection.

**Richard M. Nixon.** Elected in 1968, Richard M. Nixon was the fourth President saddled with the Vietnam conflict. Consistent with his emphasis on the need for secrecy, Nixon was not inclined to share information, or consult, with Congress. From its portrayal of South Vietnam's ability to fend off the North Vietnamese to the series of secret peace talks conducted by national security adviser Henry Kissinger, the Administration tended not to make a consistent effort to keep Congress informed.

In the year leading up to Nixon's inauguration, several significant events took place. Beginning in late January 1968, and continuing into February, North Vietnam launched the Tet offensive, a coordinated attack on South Vietnamese military and government facilities. Communist troops also attacked the American embassy compound in Saigon. Though producing, at best, mixed results in the eyes of the

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<sup>126</sup> Federation of American Scientists, "Operation Powerpack," *FAS Military Analysis Network*, available at [<http://www.fas.org/man/dod-101/ops/powerpack.htm>], visited May 13, 2002.

<sup>127</sup> Ibid.

<sup>128</sup> Fisher, *Presidential War Powers*, p. 121.

<sup>129</sup> Congressional Quarterly Service, *Congress and the Nation, 1965-1968*, vol. II (Washington: Congressional Quarterly Service, 1969), p. 67.

<sup>130</sup> Fisher, *Presidential War Powers*, p. 121.

North Vietnamese, the Tet offensive surprised American forces in Vietnam and the U.S. government,<sup>131</sup> and influenced the American public's view of the war, contributing to a decline in support for the war, a decline that had begun in 1967.<sup>132</sup> On March 31, President Johnson announced, during a televised address, that he was ordering a partial halt to the bombing of North Vietnam. Johnson also announced that he would not seek reelection and asked North Vietnam to join in negotiations to end the war. From May 13 through October 30, the U.S. and North Vietnam met 28 times, eventually reaching an agreement on expanding the peace talks. As part of the agreement, Johnson ordered, on October 31, a complete halt to the bombing of North Vietnam. Discussions about expanded talks continued through the end of the year and into 1969, and, on January 18, all parties finally reached an agreement on procedural issues, which paved the way for the beginning of negotiations on substantive issues.<sup>133</sup> In the United States, expectations of a negotiated settlement were fueled by the year-long peace talks. The public and Congress shared a desire for the U.S. to extricate itself, and particularly American troops, from Southeast Asia. By spring 1968, a majority of Americans had come to believe that U.S. involvement "in Vietnam had been a mistake."<sup>134</sup> Widespread antiwar demonstrations and other activities were a highly visible reminder of the public's fatigue and disenchantment with the war.

Nixon understood that a clear and decisive military victory in Southeast Asia was not possible,<sup>135</sup> but he believed that his policy of Vietnamization, which was based on the Nixon Doctrine,<sup>136</sup> would help him achieve a measure of success. Moreover, the policy of Vietnamization would allow him to begin bringing American troops home. Under President Johnson, the number of U.S. armed forces stationed in Vietnam had increased greatly so that, by the time Nixon was inaugurated, 530,000 American military personnel were deployed in the area.<sup>137</sup> One of Nixon's first major actions was to announce, six months after he took office, the first withdrawal of U.S. troops. The thrust of Vietnamization was to couple the withdrawal of American forces with increasing reliance on South Vietnamese troops to carry on military

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<sup>131</sup> Adam Land, "Tet Offensive," *Encyclopedia of the Vietnam War*, p. 540; Congressional Quarterly Service, *Congress and the Nation, 1965-1968*, vol. II, pp. 101-102.

<sup>132</sup> Land, "Tet Offensive," *Encyclopedia of the Vietnam War*, p. 540.

<sup>133</sup> Congressional Quarterly Service, *Congress and the Nation, 1965-1968*, vol. II, pp. 102-103.

<sup>134</sup> Melvin Small, *The Presidency of Richard Nixon* (Lawrence, KS.: University Press of Kansas, 1999), p. 66.

<sup>135</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, (Washington: Congressional Quarterly Service, 1973), p. 899.

<sup>136</sup> As outlined by the President in an address on November 3, 1969, the Nixon Doctrine stated: the U.S. would honor its treaty commitments; the U.S. would aid allies and countries whose survival was vital to U.S. security if they were threatened by a nuclear power; and, for other types of aggression, the U.S. would provide military and economic assistance when requested, but the nation under threat retained primary responsibility for defending itself (*ibid.*, p. 869).

<sup>137</sup> Small, *The Presidency of Richard Nixon*, p. 64.

operations on the ground.<sup>138</sup> By November 1972, Nixon had reduced the number of U.S. troops to 27,000.<sup>139</sup> All remaining troops were evacuated in early 1973, although U.S. air support for South Vietnamese combat troops continued.

Troop withdrawals assuaged the American public to a certain extent and were touted by the Administration as evidence that Vietnamization was successful. Nixon was criticized, though, for the slow pace of bringing troops home. The President responded to such criticisms by describing the benefits of a gradual withdrawal. First, he tied the rate of withdrawal to South Vietnam's progress in developing its military capabilities and the lessening of enemy military activities. Aiding South Vietnam in these efforts, besides expectations of it ensuring success, was necessary, in Nixon's view, to avoid his being portrayed as the President who lost Vietnam and to avoid the accompanying political fallout.<sup>140</sup> Another consideration was bringing the war to an end in an appropriate manner.<sup>141</sup> For Nixon, and his Administration, this meant achieving "peace with honor."<sup>142</sup> Time was needed for the Paris peace talks to progress satisfactorily so that the United States, and other signatories, could claim that peace with honor had been achieved.

Time alone would not be sufficient, however, in bringing the war to an appropriate conclusion. As discussed below, the South Vietnamese were unable to fend off the Viet Cong by themselves, yet the White House, consistent with its policy of Vietnamization, had pledged to bring American troops home. Striving to meet its commitments on both fronts, the Nixon Administration resorted to secretive practices in employing the military. It "could escalate only covertly, since almost all Americans demanded that the war wind down on Nixon's watch."<sup>143</sup> For example, very early in his first term, Nixon had U.S. military aircraft launch "thousands of 'legal' bombing raids against the North" in the name of protective reaction. Protective reaction strikes into North Vietnam were allowed, but only against antiaircraft sites in North Vietnam "whenever their radar locked on to American reconnaissance flights."<sup>144</sup> In early 1969, the Administration also increased the number of raids into Laos and began bombing portions of Cambodia in an effort to disrupt the North Vietnamese supply system. The North Vietnamese used trails (such as the Ho Chi Minh trail) that ran through Laos and Cambodia to transport supplies to its forces in South Vietnam. Mindful of warnings from his Secretaries of Defense and State and the leader of Cambodia about possible repercussions if the bombing of Cambodia were made public, Nixon ordered that measures be taken to obscure the true purpose of bombing missions. These included tampering with the navigational

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<sup>138</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 899.

<sup>139</sup> *Ibid.*, p. 924.

<sup>140</sup> Small, *The Presidency of Richard Nixon*, p. 67.

<sup>141</sup> *Ibid.*

<sup>142</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, pp. 899, 902.

<sup>143</sup> Small, *The Presidency of Richard Nixon*, p. 66.

<sup>144</sup> *Ibid.*, p. 71.

systems on bombers and maintaining two sets of flight records, one with the actual targets and the other with targets in South Vietnam.<sup>145</sup>

Nixon's presidency coincided with legislative efforts by Congress to restore its role in foreign affairs and exercising war powers, which had eroded over the years. The Senate acted early in President Nixon's first term, passing a national commitments resolution, S.Res. 85, by a vote of 70-16, on June 25, 1969.<sup>146</sup> Concern about U.S. commitments abroad, and a lack of complete information about commitments made by the executive branch, coalesced into support for a resolution. The resolution defined "national commitment" as "the use of the armed forces on foreign territory, or a promise to assist a foreign country, government or people by the use of the armed forces or financial resources ...." The resolution stated further that "a national commitment ... results only from affirmative action by the legislative and executive branches" of government. The proper vehicles for taking such action, as listed in the resolution, were a treaty, statute, or concurrent resolution.<sup>147</sup> However, the resolution only expressed the sense of the Senate; it did not have the force and effect of law.

The report accompanying the resolution described an imbalance between the legislative and executive branches, and explained how the imbalance came to be:

Both the executive and the Congress have been periodically unmindful of constitutional requirements and proscriptions, the executive by its incursions upon congressional prerogative at moments when action seemed more important than the means of its initiation, the Congress by its uncritical and sometimes unconscious acquiescence in these incursions. If blame is to be apportioned, a fair share belongs to the Congress. It is understandable, though not acceptable, that in times of real or seeming emergency the executive will be tempted to take shortcuts around constitutional procedures. It is less understandable that the Congress should acquiesce in these shortcuts giving away that which is not its to give, notably the war power, which the framers of the Constitution vested not in the executive but, deliberately and almost exclusively, in the Congress.<sup>148</sup>

The fact that Congress has acquiesced in, or at the very least has failed to challenge, the transfer of the war power from itself to the executive, is probably the most important single fact accounting for the speed and virtual completeness

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<sup>145</sup> Ibid.

<sup>146</sup> Consideration and passage of S. Res. 85 may be found at: "Senate Resolution 85 – Resolution Concerning National Commitments" and "National Commitments," *Congressional Record*, vol. 115, Feb. 4, June 19, 20, 23, 24, 25, 1969, pp. 2603-2604, 16600, 16615-16628, 16745-16772, 16773-16783, 16839-16844, 16845-16848, 17006-17011, 17214-17240, 17241-17246.

<sup>147</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 857.

<sup>148</sup> U.S. Congress, Senate Committee on Foreign Relations, *National Commitments*, report to accompany S.Res. 85, 91<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Rept. 91-129 (Washington: GPO, 1969), pp. 7-8.

of the transfer. Why has Congress agreed to this rearrangement of powers which is without constitutional justification, and at its own expense?<sup>149</sup>

Why did Congress acquiesce to the executive? Unfamiliarity with the nation's new role as a world power, "the cult of executive expertise," and efforts by Congress to atone for rejecting the Covenant of the League of Nations in 1919 by agreeing to proposals for international involvement are cited by the report as factors that contributed to a mindset that favored acquiescence in foreign affairs.<sup>150</sup> In its assessment of Congress's actions on the Formosa, Middle East, Cuba, and Gulf of Tonkin resolutions, the committee report noted that each situation appeared to require urgent action, there were no "firm historical guidelines" on what to do, the resolutions were necessary as expressions of national unity, and executive actions ballooned beyond original congressional expectations.<sup>151</sup> The report also noted that, following World War II, the government focused on national security, but paid little attention to constitutional matters.

The committee recommended that, for any joint resolutions in the future "involving the use or possible use of the Armed Forces," Congress ought to debate thoroughly each one so that its intent becomes known; use "authorize," "empower," or similar words to show that Congress has the authority to "authorize the initiation of war," and that it is giving the President a power he would not otherwise have; be as explicit as possible in the resolution about the circumstances, place, and purpose for using military intervention; and include a sunset provision, which would assure that Congress would have an opportunity to review its decision and terminate or extend the grant of authority given to the President.<sup>152</sup>

Speaking at a news conference held prior to the resolution's passage, Nixon argued that a President should not have to consult with the Senate during a crisis. To bolster his argument, Nixon noted that the President had to respond immediately in 1958, when Eisenhower sent troops into Lebanon, and in 1964, when Johnson orchestrated the evacuation of missionaries from the Congo.<sup>153</sup> Senator Mike Mansfield (D-MT), echoing Eisenhower's philosophy, countered that, by working in concert with the Senate and thus showing a united front, the President's hand would be strengthened.<sup>154</sup>

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<sup>149</sup> Ibid., p. 15.

<sup>150</sup> Ibid., p. 16.

<sup>151</sup> Ibid., p. 22.

<sup>152</sup> Ibid., p. 33.

<sup>153</sup> In 1958, the president of Lebanon, faced with internal and external threats to his government, requested U.S. military assistance. American troops, ships, and aircraft were deployed in July 1958. In 1964, a revolutionary government was established in Stanleyville, Republic of the Congo. Reacting to the revolutionary government's plans to hold local European residents hostage, the U.S. and Belgium mounted a rescue operation in November 1964.

<sup>154</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 856.

In March 1970, Nixon acknowledged publicly, for the first time, that the U.S. had been involved in Laos and that the involvement had begun in 1962. Several factors, including news reports of U.S. military activities in Laos and pressure from some Senators, led Nixon to release a statement about the involvement. Assuring the public that the U.S. did not have any ground troops in Laos, the President identified how many Americans were involved in logistics and how many were serving as advisers.<sup>155</sup> (Several months prior to Nixon's public admission, he had signed P.L. 921-171 (H.R. 15090; 83 Stat. 469), a defense appropriations act, which included a provision that prohibited using any of the funds appropriated in the act "to finance the introduction of American ground combat troops into Laos or Thailand.") During his address on March 6, Nixon also stated that U.S. aircraft were used only for interdiction, reconnaissance, and combat support (when requested by the Laotian government).<sup>156</sup> What Nixon did not mention in his statement were Central Intelligence Agency activities and the extent of U.S. air operations in Laos.<sup>157</sup>

The following month, Nixon turned his attention to Cambodia. On April 22, 1970, only two days after he had announced the withdrawal of 150,000 troops from Vietnam, Nixon began planning to invade Cambodia. Having made his final decision on April 28, the President informed the nation, in a televised address, on April 30. These troops were not an invasion force, Nixon said, but were needed along the border between Cambodia and South Vietnam to protect other U.S. troops as they withdrew,<sup>158</sup> to defend Cambodia against the North Vietnamese, and to capture the enemy's Central Office for South Vietnam.<sup>159</sup> Senate Foreign Relations Committee Chairman Fulbright promptly invited the President to meet with the committee on this matter. Nixon's response was to invite the Senate and House Committees on the Armed Services to meet with him the morning of May 5. The Senate Committee on Foreign Relations and the House Committee on Foreign Affairs were invited for the afternoon. Congressional reaction to the meeting was "mixed."<sup>160</sup> During the meeting, Nixon pledged to withdraw American troops from Cambodia by June 30, 1970. He repeated this pledge during a news conference on May 8.<sup>161</sup> News of the incursion into Cambodia was greeted by protests on most college campuses, including the fateful protests at Kent State University in Ohio on May 4 and at Jackson State University in Mississippi on May 15.

As part of its effort to establish a role for itself in foreign policy, Congress revisited the Gulf of Tonkin resolution in February 1968, when the Senate Committee on Foreign Relations held closed hearings on the events which led to its

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<sup>155</sup> Ibid., p. 908.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid., p. 906.

<sup>159</sup> Small, *The Presidency of Richard Nixon*, p. 78.

<sup>160</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 910.

<sup>161</sup> Ibid.

passage.<sup>162</sup> In 1970, the 91<sup>st</sup> Congress approved a foreign military sales bill that included an amendment to repeal the Gulf of Tonkin resolution. President Nixon signed P.L. 91-672 (H.R. 15628; 84 Stat. 2053) on January 12, 1971.<sup>163</sup> Initially, his Administration had opposed the repeal of the resolution, but later dropped its opposition. On the floor of the Senate, Senator Robert Dole (R-KS) noted: “The Tonkin Gulf resolution has never been used by President Nixon, and he has no intention of using it. Indeed, he has made it clear that he has never relied upon it in the conduct of American policy in Vietnam.”<sup>164</sup>

Congress took additional steps in early 1971, with the passage of two bills, to insert itself into the foreign policy process. A supplementary foreign aid authorization act, P.L. 91-652 (H.R. 19911; 84 Stat. 1942); which the President signed on January 5, 1971, included the Cooper-Church amendment, which stated that:

... none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia.

The Cooper-Church amendment also stipulated that the President must inform the Speaker of the House of Representatives and the chairman of the Senate Foreign Relations Committee 30 days in advance if he intended to provide any additional assistance to Cambodia. In case of emergency, the President was required to inform Congress 10 days in advance. On January 11, 1971, Nixon signed P.L. 91-668 (H.R. 19590; 84 Stat. 2020), a defense appropriations act, which included a prohibition on using any funds appropriated under the act for the introduction of U.S. ground troops into Laos or Thailand.

However, the prohibition against American ground troops in Laos did not stop Nixon from exercising other military options. On February 8, 1971, the U.S. assisted South Vietnam in invading Laos, with the U.S. military providing close air support to South Vietnamese ground troops. The objective was to neutralize North Vietnamese supply bases serving the Ho Chi Minh trail, and the offensive ended earlier than planned, on March 24.

The invasion ... was a disaster. The North Vietnamese knew that the South Vietnamese were coming and were well dug in, and the South Vietnamese

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<sup>162</sup> U.S. Congress, Senate Committee on Foreign Relations, *The U.S. Government and the Vietnam War, 1961-1964*, part II, p. 341. The Committee on Foreign Relations did not publish a report on its 1968 activities.

<sup>163</sup> Consideration and passage of the amendment may be found at: “Amendment of the Foreign Military Sales Act” and “Conference Report on H.R. 15628,” *Congressional Record*, vol. 116, June 22, 23, and 24, and Dec. 31, 1970, pp. 20745-20798, 20965-20969, 20969-20990, 21116-21132, 44304-44307. See U.S. Congress, Conference Committee, 1970, *Foreign Military Sales Act Amendments*, conference report to accompany H.R. 15628, H.Rept. 91-1805, 91<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1970).

<sup>164</sup> Sen. Robert Dole, “Amendment of Foreign Military Sales—Conference Report,” remarks in the Senate, *Congressional Record*, vol. 116, Dec. 31, 1970, p. 44514.



withdrew before achieving their goals.... The South Vietnamese lost 8,000 men and the North Vietnamese 12,000; the communists downed between 100 and 200 helicopters and damaged 600.... Nixon had told congressional leaders two days into the incursion that [the] Lam Son 719 [military operation] would prove that Vietnamization was working. Instead, Americans saw shocking films on the nightly newscasts of South Vietnamese clinging to helicopters taking them out of Laos.... [President Nixon] told a press conference on 17 February that everything “has gone according to plan” and that General Abrams assured him that the South Vietnamese “are fighting ... in a superior way.”<sup>165</sup>

In a televised address on April 7, Nixon announced that 100,000 additional troops would be brought home. Nixon attributed his decision to the success of Vietnamization, although his candor has since been questioned.<sup>166</sup> The American public was concerned, despite the announcement of another troop withdrawal, that Nixon was expanding the war. Fueling the public’s mistrust of the Administration was the disclosure and publication, in June 1971, of a collection of documents and materials that came to be known collectively, and were published, as the *Pentagon Papers*, a government study of U.S. involvement in Southeast Asia.<sup>167</sup> The study demonstrated “the comparative impotence of Congress in making foreign policy” and “also demonstrated the executive branch’s general indifference to the constitutional prerogatives of Congress in the conduct of defense and foreign affairs.”<sup>168</sup>

Concerned about the limits of executive privilege, the Senate Judiciary Subcommittee on Separation of Powers held hearings, in July and August 1971, on this issue and a bill that had been introduced by Senator Fulbright, S. 1125.<sup>169</sup> No action was taken on the measure. If it had been enacted, S. 1125 would have required that an individual who claimed executive privilege would have to do so in person and present a written “assertion of the privilege from the President.”<sup>170</sup> The penalty for failure to comply would have been the loss of agency funds.

Later in 1971, President Nixon shared his philosophy on executive privilege when he refused to submit to the Senate Committee on Foreign Relations information on a plan for military assistance to other countries. In a letter to the committee, Nixon wrote:

The precedents on separation of powers established by my predecessors from first to last clearly demonstrate ... that the President has the responsibility not to make available any information and material which would impair the orderly

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<sup>165</sup> Small, *The Presidency of Richard Nixon*, pp. 83-84.

<sup>166</sup> *Ibid.*, p. 84.

<sup>167</sup> *The Pentagon Papers*, as published by the *New York Times*; Pentagon history obtained by Neil Sheehan, written by Neil Sheehan, et al. (New York: Quadrangle Books, 1971).

<sup>168</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 874.

<sup>169</sup> See U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Separation of Powers, *Executive Privilege: The Withholding of Information by the Executive*, hearings on S. 1125, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., July 27-29, Aug. 4-5, 1971 (Washington: GPO, 1971).

<sup>170</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 959.

function of the executive branch of the government, since to do so would not be in the public interest.<sup>171</sup>

Subsequently, in passing S. 596 (92<sup>nd</sup> Congress) in 1972,<sup>172</sup> Congress moved toward requiring the White House to provide it with information about international executive agreements. (Three years earlier, during the national commitments hearings,<sup>173</sup> it was revealed that the number of executive agreements made by Presidents had grown and that some were kept secret.) S. 596 required the Secretary of State to send the text of an executive agreement to Congress within 60 days of the execution of the agreement. An exception was allowed for any agreement the President deemed to “be prejudicial to the national security of the United States.” These agreements would be sent only to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. Having been passed by the Senate (81-0) on February 16, 1972, and the House (voice vote) on August 14, 1972, the legislation, P.L. 92-403 (S. 596; 86 Stat. 619),<sup>174</sup> was signed by the President on August 22, 1972.<sup>175</sup>

Four years after the Tet offensive, the North Vietnamese launched another major offensive operation against South Vietnam. Military attacks began on March 30, 1972, and, by May 1, the Communists had captured Quang Tri. The South Vietnamese were saved from defeat by U.S. air power, which attacked Communist targets in South Vietnam and bombed Hanoi and Haiphong in North Vietnam.<sup>176</sup> South Vietnam was “still in desperate shape,” however, so Nixon ordered the mining of the harbors in Hanoi and Haiphong.<sup>177</sup> The President announced his decision on May 8, having alerted the Democratic and Republican leadership of the Senate and

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<sup>171</sup> Ibid.

<sup>172</sup> Consideration and passage of S. 596 may be found at: “Transmittal to Congress of International Treaties” and “Transmittal of Executive Agreements to Congress,” *Congressional Record*, vol. 118, Feb. 16 and Aug. 14, 1972, pp. 4088-4095, 28085-28087. See also U.S. Congress, Senate Committee on Foreign Relations, *Transmittal of Executive Agreements to Congress*, report to accompany S. 596, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 92-591 (Washington: GPO, 1972); U.S. Congress, House Committee on Foreign Affairs, *Transmittal of Executive Agreements to Congress*, report to accompany S. 596, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 92-1301 (Washington: GPO, 1972); U.S. Congress, Senate Committee on Foreign Relations, *Transmittal of Executive Agreements to Congress*, hearings on S. 596, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess., Oct. 20, 21, 1971 (Washington: GPO, 1971); U.S. Congress, House Committee on Foreign Affairs, Subcommittee on National Security Policy and Scientific Developments, *International Executive Agreements*, hearings on S. 596, H.R. 14365, and H.R. 14647, 92<sup>nd</sup> Cong., 2<sup>nd</sup> sess., June 19, 1972 (Washington: GPO, 1972).

<sup>173</sup> See U.S. Congress, Senate Committee on Foreign Relations, *National Commitments*, report to accompany S.Res. 85, 91<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Rept. 91-129 (Washington: GPO, 1969).

<sup>174</sup> P.L. 92-403, as amended, may be found at 1 U.S.C. 112b.

<sup>175</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, pp. 882-883.

<sup>176</sup> Small, *The Presidency of Richard Nixon*, p. 89.

<sup>177</sup> Ibid.

the House and the chairmen and ranking minority members of four committees of each house one hour before his televised speech. Senator Mansfield said that one-hour notice did not qualify as consulting with Congress, adding, “We were told after the fact.”<sup>178</sup>

After unsuccessful efforts in 1970, 1971, and 1972 to pass war powers legislation,<sup>179</sup> Congress, in 1973, overrode a veto to enact the War Powers Resolution. On July 18, 1973, the House of Representatives passed H.J.Res. 542 (93<sup>rd</sup> Congress) by a vote of 244-170.<sup>180</sup> The Senate passed its own version of war powers legislation, S. 440 (93<sup>rd</sup> Congress), two days later by a vote of 72-18.<sup>181</sup> Anticipating a presidential veto, congressional opponents did not mount a serious challenge to the resolution.<sup>182</sup> As passed by the House, H.J.Res. 542 would have limited the commitment of U.S. troops abroad to 120 days (unless war had been declared or the time period had been extended by Congress) and would have allowed Congress to terminate the troop commitment at any time. As passed by the Senate, the legislation would have limited the commitment of troops to 30 days, unless Congress authorized, through a bill or a joint resolution, an extension.<sup>183</sup> The result of conference on the measures was a revamped version of H.J.Res. 542.

On October 10, 1973, the Senate approved the conference report by a vote of 75-20. The vote in the House, on October 12, was 238-123 for the conference report. President Nixon vetoed the resolution on October 24. In his message to Congress explaining the veto, Nixon stated that several of the provisions were unconstitutional and expressed his concern that the resolution would “seriously undermine this Nation’s ability to act decisively and convincingly in times of international crisis.”<sup>184</sup> On November 7, 1973, Congress overrode Nixon’s veto. In the House of

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<sup>178</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 926.

<sup>179</sup> *Ibid.*, p. 849.

<sup>180</sup> Consideration and passage of H.J.Res. 542 may be found at: “War Powers of Congress and the President,” “War Powers Act,” “Statement by the Hon. Clement J. Zablocki on the War Powers Act of 1973,” “Conference Report on House Joint Resolution 542, War Powers Resolution of 1973,” “War Powers Resolution of 1973 — Conference Report,” “War Powers Resolution — Veto Message from the President of the United States (H.Doc. 93-171),” “The Veto of the War Powers Resolution,” and “War Powers of Congress and the President — Veto,” *Congressional Record*, vol. 119, June 25, July 18, July 20, July 31, Oct. 4, Oct. 10, Oct. 12, Oct. 25, and Nov. 7, 1973, pp. 21209-21236, 24653-24708, 25093-25120, 26884, 33038, 33548-33569, 33858-33874, 34990-34991, 34992-34993, 36175-36198, 36202-36222.

<sup>181</sup> Consideration of S. 440 may be found at: “War Powers Act,” *Congressional Record*, vol. 119, July 18-20, 1973, pp. 24531-24550, 24590-24596, 24918, 25051-25092, 25093-25120.

<sup>182</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 850.

<sup>183</sup> Congressional Quarterly Service, *Congress and the Nation, 1973-1976*, vol. IV, (Washington: Congressional Quarterly Service, 1977), pp. 849-850.

<sup>184</sup> U.S. President (Nixon), “Veto of the War Powers Resolution,” *Public Papers of the Presidents of the United States, 1973* (Washington: GPO, 1975), p. 893.

Representatives, the vote was 284-135.<sup>185</sup> Eighty-six of 189 Republicans and 189 of 230 Democrats voted to override the veto. In the Senate, the vote was 75-18. Twenty-five of 40 Republicans and 50 of 53 Democrats voted to override. The major provisions of P.L. 93-148 (H.J.Res. 542; 87 Stat. 555) are:

- ! The President may commit troops to hostilities or situations where hostilities are imminent only pursuant to a declaration of war, a specific statutory authorization, or a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.
- ! The President shall consult in every possible instance with Congress before committing U.S. troops to hostilities or to situations where hostilities are imminent. The President shall consult regularly with Congress until U.S. troops are removed from hostilities or situations where hostilities are imminent.
- ! The President shall submit, within 48 hours of substantially expanding the number of U.S. combat troops already located in another nation or introducing U.S. troops into hostilities or situations where hostilities are imminent, a report to the Speaker of the House. The report shall explain the circumstances warranting U.S. military action, cite the constitutional and statutory authority the President is using, and provide an estimate of the scope and duration of the hostilities or U.S. involvement.
- ! Any commitment of troops shall be terminated within 60 calendar days after the President has submitted a report unless Congress has declared war, has specifically authorized the use of the armed forces, has extended by law the 60-day period, or is unable to meet as a result of an armed attack upon the United States. The initial period of 60 days “shall be extended for not more than an additional thirty days” if the President certifies, in writing, to Congress that such additional time is needed for the safe and prompt removal of American troops.

Though some consider the War Powers Resolution a measure that benefits Congress by mandating its involvement in decisions to commit U.S. troops abroad, others maintain that the statute has not helped Congress restore the balance between itself and the presidency. Several assessments conclude that the War Powers Resolution helps to maintain the imbalance. As one of them asserted: “In fact, by recognizing that the President may use armed force for up to 90 days without seeking

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<sup>185</sup> Fifteen Members of the House who initially had voted against H.J.Res. 542 and the conference version chose to vote to override Nixon’s veto. Their reasons for changing their positions on the measure varied: some Members did not want to appear to support Nixon’s view of the resolution; others thought the override would be a step toward impeachment; and, for Democrats, it was an opportunity to override successfully Nixon after having failed in eight earlier efforts to override him. (Fisher, *Congressional Abdication on War & Spending*, p. 64.)

or obtaining legislative authority, the resolution sanctions a scope of independent presidential power that would have astonished the framers. The founding fathers vested in Congress the power to initiate hostilities against foreign nations.<sup>186</sup>

Some Members expressed the same concern that the statute failed to reclaim lost ground. Representative Vernon Thompson (R-WI) offered this assessment of the resolution: “The clear meaning of the words certainly points to a diminution rather than an enhancement of the role of Congress in the critical decisions [about] whether the country will or will not go to war.”<sup>187</sup> Another Member of the House, Robert Eckhardt (D-TX), commented that the measure would allow the President “to exercise a warmaking power” which the Constitution “exclusively assigned to the Congress.”<sup>188</sup> Even a principal sponsor of S. 440, Senator Thomas Eagleton (D-MO), was adamantly opposed to the bill that emerged from conference and supported Nixon’s veto:

What this bill says is that the President can send us to war wherever and whenever he wants to. Troops could be deployed tomorrow to the Mideast under this bill without our prior authority. All the President has to do is to make a telephone call to Senator Mansfield and Senator Scott and say, “The boys are on the way. I think you should know.” Consultation. There they are; 60 to 90 days. Once those troops are committed the history of this country is replete with examples; that once committed they remain.

... Despite what has been written and said about [this bill], it does not limit the power of the President of the United States to wage war by himself.

Quite to the contrary. It attempts to emblazon into law, that unilateral decisionmaking process.<sup>189</sup>

The tendency of the Nixon Administration to operate in secret was evident in national security adviser Henry Kissinger’s activities. During Nixon’s first term, Kissinger refused “to testify before committees on the conduct of the Vietnam war,” which “distressed” Members of Congress.<sup>190</sup> His refusal to testify may have been related to his participation in secret negotiations at the time. Although public negotiations with North Vietnamese officials began in 1968, on January 25, 1972, the President revealed that private peace negotiations had also been going on for two years between Kissinger and North Vietnamese diplomats. They met 12 times,

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<sup>186</sup> Louis Fisher, *Congressional Abdication on War & Spending* (College Station, TX: Texas A&M University Press, 2000), pp. 62-63.

<sup>187</sup> Rep. Vernon Thompson, “War Powers Resolution — Veto Message from the President of the United States,” remarks in the House, *Congressional Record*, vol. 119, Nov. 7, 1973, p. 36207.

<sup>188</sup> Rep. Robert Eckhardt, “War Powers Resolution – Veto Message from the President of the United States,” remarks in the House, *Congressional Record*, vol. 119, Nov. 7, 1973, p. 36208.

<sup>189</sup> Sen. Thomas Eagleton, “War Powers of Congress and the President — Veto,” remarks in the Senate, *Congressional Record*, vol. 119, Nov. 7, 1973, p. 36177.

<sup>190</sup> Congressional Quarterly Service, *Congress and the Nation, 1969-1972*, vol. III, p. 959.

beginning on August 4, 1969, and continued through August 1971. Kissinger continued to meet with North Vietnamese officials throughout 1972 and, on January 27, 1973, a peace treaty was signed in Paris. All remaining U.S. troops were withdrawn from Vietnam on March 28, 1973.

Reelected in 1972 with 60.7% of the popular vote and 520 electoral votes,<sup>191</sup> Nixon soon was embroiled in a scandal that eventually would lead to his resignation under the cloud of possible impeachment. On June 17, 1972, seven men broke into the headquarters of the Democratic National Committee at the Watergate hotel and office complex. They were tried in January 1973. Five pled guilty and two were convicted. After the break-in, Nixon learned about the connections among the seven Watergate burglars, the Committee to Reelect the President (CREEP), and the White House. Working with John Dean, White House counsel, John Ehrlichman, assistant to the President for domestic affairs, and H. R. Haldeman, his chief of staff, Nixon fashioned a plan for “political containment.”<sup>192</sup>

Their efforts were for naught as the investigations into Watergate also examined the cover-up. The *Washington Post* reported, on June 3, 1973, that John Dean had told Senate and Justice Department investigators<sup>193</sup> that he had discussed the cover-up with the President on a number of occasions.<sup>194</sup> Watergate investigators also uncovered evidence that the White House had known about, if not authorized, the burglary of the office of Daniel Ellsberg’s psychiatrist, which occurred on September 3, 1971. (Daniel Ellsberg, a former defense analyst, was responsible for leaking the *Pentagon Papers* to the press.) As additional information about White House activities was revealed or discovered, Nixon’s ongoing attempts to limit the damage had negative consequences. For example, the President sparred with the Senate Select Committee on Presidential Campaign Activities over its request for presidential tape recordings, first refusing to turn over the tapes, then offering to provide edited versions, and so on, until compelled by a court order to produce the tapes. In the so-called “Saturday Night Massacre” on October 20, 1973, Nixon abolished the office of the special prosecutor for Watergate, headed by Archibald Cox, and had Solicitor General Robert H. Bork, in his capacity as acting attorney general, dismiss Cox. Attorney General Elliot L. Richardson had refused to remove Cox and then resigned. Deputy Attorney General William D. Ruckelshaus also refused and resigned. (In their absence, Bork, by law, became acting Attorney General.) Nixon continued to maintain his innocence, but, in late July 1974, the

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<sup>191</sup> The Democratic candidate, George McGovern, received 37.5% of the popular vote and 17 electoral votes. Minor party candidates accounted for 1.8% of the popular vote and one electoral vote (*ibid.*, p. 23).

<sup>192</sup> Small, *The Presidency of Richard Nixon*, p. 276.

<sup>193</sup> On February 17, 1973, the Senate had established, by a vote of 70-0, the Senate Select Committee on Presidential Campaign Activities. On May 18, 1973, the Attorney General-designate, Elliot Richardson, selected Archibald Cox to serve as special prosecutor for Watergate.

<sup>194</sup> Carl Bernstein and Bob Woodward, “Dean Alleges Nixon Knew of Cover-up Plan,” *Washington Post*, June 3, 1973, p. A1.

House Committee on the Judiciary approved three articles of impeachment.<sup>195</sup> The charges were obstruction of justice (approved by a 27-11 vote), abuse of power (28-10), and contempt of Congress (21-17). On August 9, 1974, Nixon became the first President to resign from office. He was succeeded by Gerald Ford, whom Nixon had appointed to the vice presidency after Spiro Agnew had resigned on October 10, 1973.<sup>196</sup>

## Persian Gulf Conflict

**Background.** Under the leadership of Saddam Hussein, Iraq launched a predawn attack, on August 2, 1990, against Kuwait, its small southeastern neighbor bordering on the upper end of the Persian Gulf. Among the factors motivating this assault was an \$8 billion debt incurred by Iraq as a result of its eight-year war with Iran. Approximately half of this amount was owed to Saudi Arabia, Kuwait, and other Persian Gulf States. Iraqi leaders thought that this debt should be forgiven in as much as Iraq had served as a shield against Iran. Moreover, Kuwait was contributing to low international oil prices by exceeding its oil production quota set by the Organization of Petroleum Exporting Countries (OPEC). As a result, Iraq's revenues from its own oil sales were adversely affected. Furthermore, Kuwait was seen as drawing oil from the Rumaila oilfield, only a small part of which lay beneath its territory.

In mid-July 1990, Iraq accused Kuwait and the United Arab Emirates of exceeding their OPEC quotas, and charged the former with pumping \$2.4 billion worth of oil that rightfully belonged to Iraq. Late in the month, Iraq began a buildup of troops and military equipment in an area near its border with Kuwait. An attempt at talks between Iraq and Kuwait in Jiddah, Saudi Arabia, on August 1 quickly broke down. Hours later, Iraqi armed forces invaded Kuwait, and, by August 8, Baghdad announced that the occupied nation was being annexed.<sup>197</sup>

**Invasion Response.** Although American intelligence had detected the massing of Iraqi armed forces on the Kuwait border and their presence gave U.S. leaders concern, the sudden invasion of Kuwait was unexpected. Speaking with reporters at 8:05 a.m. on August 2, President George H. W. Bush said that "the United States strongly condemns the Iraqi military invasion of Kuwait," called "for the immediate and unconditional withdrawal of all the Iraqi forces," and characterized the assault as "raw aggression." He announced that United Nations Ambassador Thomas Pickering, in conjunction with representatives from Kuwait, had brought about an emergency convening of the Security Council for a "quick, overwhelming vote condemning the Iraqi action and calling for immediate and

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<sup>195</sup> See U.S. Congress, House Committee on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, 93<sup>rd</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 93-1305 (Washington: GPO, 1974).

<sup>196</sup> At the time, Agnew was being investigated by the U.S. attorney in Baltimore for allegedly receiving bribes and kickbacks from contractors while he served as the Baltimore County executive and later as governor of Maryland.

<sup>197</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992* (Washington: Congressional Quarterly, 1993), p. 299.

unconditional withdrawal.” Finally, the President reported that “the Department of State has been in touch with governments around the world urging that they, too, condemn the Iraqi aggression and consult to determine what measures should be taken to bring an end to this totally unjustified act.”<sup>198</sup> Other steps included issuing E.O. 12722, which declared a national emergency with regard to the threat to the national security and foreign policy of the United States resulting from the Iraqi invasion, and invoking statutory authorities blocking Iraqi government property, freezing Iraqi government assets, and prohibiting transactions with Iraq.<sup>199</sup> E.O. 12723 was issued to protect Kuwaiti government property and assets.<sup>200</sup> These initial actions reflected the willingness of the Bush Administration to work through the United Nations (U.N.) and cooperatively, as well, with other nations having an interest in the region to reverse Iraq’s aggression against Kuwait.

In his initial meeting with the press regarding the Kuwait invasion, President Bush, when asked if he was contemplating any intervention or sending of troops, replied: “I’m not contemplating such action.”<sup>201</sup> Later that day, in an afternoon exchange with the press, the President indicated that he had discussed options on the Kuwait situation with relevant advisers, and proffered, “we’re not ruling any options in, but we’re not ruling any options out.”<sup>202</sup> However, as has been observed, the President was embarking on a course of unilaterally deciding American policy regarding the Kuwait crisis.<sup>203</sup>

Within Congress, many Members denounced Iraq’s attack upon Kuwait, some hinting that the use of military force might be necessary as a response. In the House, on August 2, a bill (H.R. 5431, 101<sup>st</sup> Congress) imposing sanctions on Iraq similar to those set by E.O. 12722 was expedited through two committees, brought to the floor, and, with virtually no debate, was adopted on a 416-0 vote. That same day, the Senate, on a 97-0 vote, approved a resolution (S.Res. 318) endorsing the President’s order.<sup>204</sup>

A primary concern for President Bush in the immediate aftermath of the Iraqi invasion of Kuwait was deterring further advance by Iraqi forces into Saudi Arabia,

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<sup>198</sup> U.S. President (Bush), “Remarks and an Exchange with Reporters on the Iraqi Invasion of Kuwait,” *Public Papers of the Presidents of the United States, George Bush*, 1990 (Washington: GPO, 1991), p. 1083.

<sup>199</sup> E.O. 12722, *Federal Register*, vol. 55, Aug. 3, 1990, pp. 31803-31804.

<sup>200</sup> E.O. 12723, *ibid.*, p. 31805.

<sup>201</sup> *Ibid.*, p. 1084.

<sup>202</sup> U.S. President (Bush), “Remarks and a Question-and-Answer Session with Reporters in Aspen, Colorado, Following a Meeting with Prime Minister Margaret Thatcher of the United Kingdom,” *Public Papers of the Presidents of the United States, George Bush*, 1990, p. 1086.

<sup>203</sup> Jean Edward Smith, *George Bush’s War* (New York: Henry Holt, 1992), pp. 90, 169-170, 202.

<sup>204</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 301-302; *Congressional Record*, vol. 136, Aug. 2, 1990, pp. 21798-21809.



supplier of about 15% of U.S. oil imports alone. Supported by various congressional leaders in this strategy, the President actively sought to convince the Saudi king of the need for locating American armed forces within his nation. Apprised on August 6 of an Iraqi missile threat to his country, the king agreed to accept a U.S. military presence. However, reportedly only one Member of Congress—Senator Sam Nunn (D-GA), chairman of the Committee on Armed Services—was informed in advance of the actual deployment of U.S. troops to Saudi Arabia.<sup>205</sup> Congressional leaders were informed shortly after the fact.<sup>206</sup> By the end of the month, “the United States, Great Britain and several other nations assembled formidable air and naval forces in the Gulf region.”<sup>207</sup> With E.O. 12727 of August 22, President Bush called some 50,000 military reservists to active duty to support the growing U.S. military presence in Saudi Arabia.<sup>208</sup> On August 28, the President held his first briefing with Members of Congress regarding the Gulf crisis, although a White House briefing on these matters had been held for a few congressional leaders on August 8.<sup>209</sup>

During August, President Bush also devoted considerable energy to building a broad international coalition to oppose the Iraqi invasion and occupation of Kuwait. This effort included not only political support rectifying the situation in Kuwait, but also the commitment of combat forces to participate, if necessary, in the repelling of the Iraqi invaders and the liberation of Kuwait. Among those Arab nations providing troops were Egypt, Saudi Arabia, and Syria, as well as Bahrain, Kuwait, Morocco, Oman, Qatar, and the United Arab Emirates. Other contributors included Bangladesh, Pakistan, and Turkey, as well as such traditional American allies as Canada, France, Great Britain, and Italy.<sup>210</sup>

The U.N. was another arena for retaliation against Iraq. On the day of the invasion of Kuwait, the Security Council, in emergency session, unanimously adopted Resolution 660 condemning the attack and calling for an immediate Iraqi withdrawal. Four days later, on August 6, the Security Council approved Resolution 661 establishing a nearly total embargo on Iraqi commerce, with exceptions for humanitarian shipments of medicine and some food. It did not, however, explicitly authorize a blockade, which resulted in some debate over the enforcement of its provisions. Eventually, on August 25, the Security Council, with Resolution 65, authorized the use of force to ensure compliance with the embargo. A few months later, on November 29, the Security Council, on a 12-2 vote, adopted Resolution 678,

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<sup>205</sup> Robert J. Spitzer, “The Conflict Between Congress and the President Over War,” in Marcia Lynn Whicker, James P. Pfiffner, and Raymond A. Moore, eds., *The Presidency and the Persian Gulf War* (Westport, CT: Praeger, 1993), p. 28.

<sup>206</sup> U.S. President (Bush), “Letter to Congressional Leaders on the Deployment of United States Armed Forces to Saudi Arabia and the Middle East,” *Public Papers of the Presidents of the United States, George Bush*, 1990, pp. 116-117.

<sup>207</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, p. 302

<sup>208</sup> E.O. 12727, *Federal Register*, vol. 55, Aug. 27, 1990, p. 35027.

<sup>209</sup> See Smith, *George Bush’s War*, pp. 102, 143; U.S. President (Bush), “Remarks at a White House Briefing for Members of Congress on the Persian Gulf Crisis,” *Public Papers of the Presidents of the United States, George Bush*, 1990, pp. 1172-1174.

<sup>210</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 302-303.

authorizing the use of force to expel Iraq from Kuwait after January 15, 1991, thereby providing 47 days for diplomats to attempt to persuade Iraq to withdraw peacefully from Kuwait.<sup>211</sup>

With the coming of fall, a broad consensus of public and congressional opinion continued to support opposition to Iraq's aggression and the protection of Saudi Arabia. However, views were shifting.

On Capitol Hill, several congressional committees subjected administration representatives to unexpectedly tough questioning over proposed accelerated arms sales to Saudi Arabia. Many in Congress also began to insist that any move to war must include close consultation with Congress, as well as a formal congressional declaration or other authorization. Such sentiments came not only from Democratic leaders, but from such prominent Republicans as Senate Minority Leader Robert Dole (R-KS) and Senator Richard Lugar (R-IN).<sup>212</sup>

When resolutions supporting the actions taken by President Bush in response to the invasion of Kuwait came under congressional consideration, the House version (H.J.Res. 658, 101<sup>st</sup> Congress) was adopted on October 1 on a 380-29 vote,<sup>213</sup> while the Senate counterpart measure (S.Con.Res. 147) received a 96-3 endorsement the following day.<sup>214</sup> During the Senate discussion, Senators supporting the resolution sought to assure opponents that it was not a Tonkin Gulf resolution for the Persian Gulf. The exchange was somewhat reflective of more widespread public uncertainty about a U.S.-led offensive against Iraq. According to a *New York Times*/CBS News public opinion poll of October 8-10, the President's Gulf policies were supported by 57% of Americans, as compared with 75% in early August.<sup>215</sup>

A few weeks later, on November 8, the President announced that he was reinforcing the 230,000 American troops already in the Persian Gulf. The Pentagon indicated that some 200,000 personnel would be deployed, and the rotation of troops in and out of the region was being discontinued. Some critics thought the troop increase was premature and reflected a lack of confidence in the effects of economic sanctions to induce Iraq to leave Kuwait. Congressional leaders were taken by surprise because no mention of the anticipated personnel increase had been made at Gulf situation briefings held for them by the Vice President on October 24 and the President on October 30.<sup>216</sup> At a White House conference on November 14, the President quelled demands for a special session of Congress (final adjournment of

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<sup>211</sup> Ibid., pp. 303-304, 305.

<sup>212</sup> Spitzer, "The Conflict Between Congress and the President Over War," p. 28. The President provided an opportunity for such consultation on September 21 when he "met with key members of Congress for a long and sober discussion about the [dangers of the Gulf] situation," Smith, *George Bush's War*, pp. 159-160.

<sup>213</sup> *Congressional Record*, vol. 136, Oct. 1, 1990, pp. 26749-26764, 26861-26862.

<sup>214</sup> Ibid., Oct. 2, 1990, pp. 26931-26939, 26951-26959.

<sup>215</sup> *Congressional Quarterly*, *Congress and the Nation*, 1989-1992, pp. 304, 306.

<sup>216</sup> Smith, *George Bush's War*, pp. 195-198.

the 101<sup>st</sup> Congress had occurred on October 28) and assured congressional leaders that he was not seeking to go to war.<sup>217</sup>

On November 20, 45 Democratic House members filed suit in U.S. District Court to obtain an injunction to bar Bush from using force to push Iraq from Kuwait without first seeking congressional authorization. The suit, *Ronald V. Dellums et al. v. George Bush*, was turned aside in a ruling handed down on December 12 by Judge Harold H. Green [sic]. In his opinion, Green said that the issue was not yet “ripe,” meaning that it would have been premature for the court to rule since Congress as a whole had not yet taken any stand on the issue. At the same time, however, Green added that Congress alone possessed the power to declare war.<sup>218</sup>

Shortly thereafter, on November 29, the Bush Administration obtained Security Council agreement on Resolution 678, authorizing the use of force to expel Iraq from Kuwait after January 15, 1991.

When the 102<sup>nd</sup> Congress convened on January 3, 1991, the President’s party was in minority status in both the House (267-167) and the Senate (56-44). With the January 15 deadline of Resolution 678 looming on the horizon, many Members wanted to give the sanctions more time to take effect and objected to going to war shortly after the time allowed for diplomatic resolve had expired. Congress and the Bush Administration also were in dispute over the President’s constitutional authority to order offensive actions against Iraq when U.S. forces had not been attacked.<sup>219</sup> The President had been reminded of this disagreement at a White House breakfast conference with the leadership on the morning of the day that the new Congress convened.<sup>220</sup> With some sense that he had enough supporting votes, President Bush sent a January 8 letter to the congressional leadership requesting the adoption of a resolution “stating that Congress supports the use of all necessary means to implement UN Security Council Resolution 678,” saying this “action would send the clearest possible message to Saddam Hussein that he must withdraw without condition or delay from Kuwait.”<sup>221</sup> Attempts to fashion such a resolution were briefly delayed by an attempt at negotiations between the United States and Iraq in Geneva on January 9. The meeting contributed nothing to realizing an Iraqi withdrawal, but the conduct of the Iraqi foreign minister “had the unintended effect of solidifying support among some members of Congress for the president’s threat to use force.”<sup>222</sup>

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<sup>217</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 304-305.

<sup>218</sup> Spitzer, “The Conflict Between Congress and the President Over War,” p. 29.

<sup>219</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 307-308; also see Spitzer, “The Conflict Between Congress and the President Over War,” pp. 33-38, and Louis Fisher, “The Power of Commander in Chief,” in Whicker, Pfiffner, and Moore, eds., *The Presidency and the Persian Gulf War*, pp. 45-61.

<sup>220</sup> Smith, *George Bush’s War*, p. 239.

<sup>221</sup> U.S. President (Bush), “Letter to Congressional Leaders on the Persian Gulf Crisis,” *Public Papers of the Presidents of the United States, George Bush, 1991* (Washington: GPO, 1992), pp. 11-12.

<sup>222</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, p. 308.

Congress returned to finalizing a resolution on the Persian Gulf crisis on January 10. In both chambers, competing resolutions calling for continued reliance on economic sanctions or authorizing the President to use “all means necessary” to expel Iraq from Kuwait were produced. Voting occurred on January 12. In the Senate, the economic sanctions resolution (S.J.Res. 1) was defeated on a 46-53 vote; the other (S.J.Res. 2) was approved on a bipartisan 52-47 vote.<sup>223</sup> In the House, the economic sanctions resolution (H.Con.Res. 33) was rejected on a 183-250 vote; the action authorization resolution (H.J.Res. 77) was adopted on a bipartisan 250-183 vote.<sup>224</sup> After the Senate agreed to the latter House resolution (H.J.Res. 77), it was presented to the President and signed into law on January 14.<sup>225</sup>

For the United States, the offensive against Iraq—denominated “Operation Desert Storm”—began in the early afternoon of January 16, less than 17 hours after the expiration of the U.N. deadline. It began with attacks by aircraft and missiles against strategic targets in Iraq and Kuwait and to gain quick air superiority over the anticipated ground combat area. The next day, the Senate, on a 98-0 vote, adopted a resolution (S.Con.Res. 2) commending and supporting the efforts and leadership of the President in the Persian Gulf crisis. The following day, the House approved the resolution on a 399-6 vote, the latter six Members voting “present.”<sup>226</sup>

While the initial aerial assaults were “highly successful,” Iraq struck back the following day with missile assaults against Israel, perhaps seeking to antagonize that nation sufficiently to enter the Gulf war and disrupt the coalition of forces marshaled against it. At the urging of the Bush Administration, Israel did not enter the war. Both houses of Congress adopted resolutions commending Israel’s performance in this regard, the House doing so on January 23 (H.Con.Res. 41) on a 416-0 vote and the Senate acting the next day (S.Con.Res. 4) with a 99-0 vote.<sup>227</sup>

Aerial bombing of Iraqi territory continued for 38 days, but neither a capitulation nor an internal uprising against Saddam Hussein’s regime resulted. A February 15 offer, qualified in various ways, from Iraq to withdraw from Kuwait was rejected by President Bush. On February 21, a withdrawal plan negotiated by the Soviet Union with Iraq was also turned down for failing to meet U.S. conditions for ending the war. Then, on February 22, President Bush gave Iraq an ultimatum to begin withdrawing from Kuwait by noon of the following day or face military reprisal.<sup>228</sup> The deadline passed with no withdrawal of Iraqi troops. In the early

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<sup>223</sup> *Congressional Record*, vol. 137, Jan. 12, 1991, pp. 937-1019.

<sup>224</sup> *Ibid.*, pp. 1034-1140.

<sup>225</sup> *Ibid.*, pp. 1030, 1141; 105 Stat. 3.

<sup>226</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 310-312; *Congressional Record*, vol. 137, Jan. 17, 1991, pp. 1815-1825; *ibid.*, Jan. 18, 1991, pp. 1871-1901.

<sup>227</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 311-312; *Congressional Record*, vol. 137, Jan. 23, 1991, pp. 2030-2044, 2052-2053; *ibid.*, Jan. 24, 1991, pp. 2175-2181, 2215-2216.

<sup>228</sup> U.S. President (Bush), “Remarks on the Persian Gulf Conflict,” *Public Papers of the* (continued...)

morning hours of February 24, a massive American, British, and French ground force, moving far to the west of Iraq's frontline fortifications, began an offensive which, 100 hours later, would result in the liberation of Kuwait and the smashing of the Iraqi army. A cease fire was established in the region on February 28.<sup>229</sup> In celebration of his accomplishments in the Persian Gulf crisis, President Bush was invited to address a joint session of Congress on March 6. On that occasion, before formally introducing the President, House Speaker Thomas S. Foley (D-WA), departing from tradition, expressed to him "on behalf of the Congress and the country, and through you to the members of our armed forces, our warmest congratulations on the brilliant victory of the Desert Storm Operation."<sup>230</sup>

## Overview

A number of considerations affect a President's efforts to inform Congress about the commitment of American armed forces to a condition of overseas military conflict. Not the least of these are the majority or minority status of the President's political party in the House and the Senate; the extent of public, congressional, and international support for the President's action; the number of personnel committed and the conditions of harm they face; the anticipated duration of the commitment; and the diplomatic conditions surrounding the commitment. Other important considerations are the nature of the "informing" activity—a presidential speech to the nation or a joint session of Congress, informal remarks by the President at the White House, a briefing by an administration representative, testimony before a congressional committee by administration officials, proffered documents, or a conversation about a course of action. Also, who in Congress is being informed—the leadership of both houses, selected committee chairs of one or both chambers, certain Members who are supportive of the President's action, or the membership of the House and the Senate in joint session. Whether personally or through aides, the President usually offers Congress information about events that have already transpired. It is seemingly unusual for a President to include Members of Congress directly in his decisionmaking, although advice may be solicited (or offered without invitation) without any indication of its acceptability. Indeed, although a President may honor the perceived obligation to inform Congress about the commitment of American armed forces to a condition of overseas military conflict, Members may well be dissatisfied with the manner in which the information is provided, the contents offered, the continued unilateral direction of the commitment by the President, and, in some cases, the broad expansion of a commitment made by Congress in response to a specific incident.

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<sup>228</sup> (...continued)

*Presidents of the United States, George Bush, 1991*, pp. 165-166.

<sup>229</sup> Congressional Quarterly, *Congress and the Nation, 1989-1992*, pp. 312, 314-315.

<sup>230</sup> U.S. President (Bush), "Address Before a Joint Session of the Congress on the Cessation of the Persian Gulf Conflict," *Public Papers of the Presidents of the United States, George Bush, 1991*, pp. 218-219.