

ADDRESS TO AIR WAR COLLEGE

TITLE: Congressional Interests and National Security Policy

PLACE: Maxwell AFB, Montgomery, Alabama

DATE: Thursday, November 9, 1978

TIME: 1:15 p.m.

AUDIENCE: U.S. Military officers, military officers of foreign countries, civilians from U.S. government agencies.

LENGTH: 45 minute presentation followed by 45 minutes of questions.

HOSTS: Colonel William J. Barlow
Lieutenant General Raymond B. Furlong

SCOPE:

1. The constitutional powers provided to Congress which affect national security affairs.
2. The role and Congressional standing of special committees involved in the formulation of national security policy and the extent of reliance on committee staff members.
3. The impact and extent of influence that special interest and pressure groups have on Congressional actions dealing with national security issues.
4. The possible clash of executive and Congressional interests on major national security policy issues.
5. Congressional actions which originate, shape, modify or negate national security policy.

ADDRESS TO AIR WAR COLLEGE

A. Role of the Congress

1. Constitutional Powers
2. Executive Preeminence

B. Clash of Interests

1. SALT
2. Unilateral Executive Action
3. Challenges to the Executive
4. Executive v. Congressional Structure
5. Single Issue Politics

C. Results of the Clash

1. Congressional Power Initiatives
2. War Powers Act
3. Treaties v. Executive Agreements
4. Control of Funds

D. Special Senate Procedures

1. Nominations
2. Reprogramming

E. Committees and special interests

1. Congressional Staff
2. Lobbying

F. Conclusion

CONSTITUTIONAL POWERS

I don't think that I need to tell you in detail what the Constitutional powers are that the Congress has in national defense or security matters. I'm sure your reading has already given you that basic knowledge. You already know that the Congress has authority to raise and support armies, declare war, ratify treaties, advise and consent on appointments and has certain impeachment powers. What we need to talk about are how those powers really work in the real world of the Congress in its relationship with the Executive in this beginning of our third century as a nation.

EXECUTIVE PREEMINENCE

In reality the President, acting through the various organs of the Executive Branch, has a virtual monopoly on the direction of governmental policy in the field of foreign affairs and national security policy. Thus, although the Congress has the legislative powers over these areas granted to it by the Constitution, the actual conduct of foreign affairs and national security affairs are exclusively the prerogative of the President.

Students of the Constitution will tell you that our fathers intended

that the Congress be consulted at the very earliest stages in the formulation of national security or foreign affairs policy. In reality, in this day and age, it is very rare for the President or any of his departments to consult with the Congress. In almost every case, the decisions of the Executive Branch are presented to the Congress far too late for the Congress to have any say in what has been decided.

SALT

There have been some current changes in this matter, particularly with regard to the SALT talks. The Congress has been kept informed by

the Executive of the progress in the SALT negotiations. This has probably come about for two reasons. The first is that the Congress has been insisting publically to the President that in matters which must be brought before them for ratification, that they should be kept informed.

The second reason is that the Executive has an interest in keeping the Congress informed of the progress of matters p^eceeding a potential SALT agreement, because the Executive can then be aware of the particular concerns of the Senate. Its negotiating position may be modified

to conform to those desires to help assure arriving at an agreement which will have a chance of ratification in the Senate.

UNILATERAL EXECUTIVE ACTION

Congress, of course, has granted very wide powers to all the Presidents to carry on wars in which the United States has been involved. As you know, some of the emergency powers granted to the Executive Branch during World War II and during Korea have only recently been terminated. It has also been the case that the Executive has at times felt quite free to conduct extensive foreign military

operations without any significant consultation with Congress.

The two most striking examples, of course, are the Korean conflict and the Vietnam war. As you know, in Korea President Truman ordered our armed forces into action on the basis of the United Nations Security Council resolution, which was quickly engineered to cover our need to go into that very critical area.

Likewise, in Vietnam we were in militarily before there was any particular political awareness of our presence and certainly no political awareness of what would be its growth

and consequences. I would certainly not say, however, that the Congress continued unaware of the involvement in Vietnam, since the gradual growth of our forces and involvement there were surely within the knowledge of the Congress.

Of course, the Congress adopted the Tonkin Gulf resolution in 1964, which authorized the President to send in troops to defend United States forces, and the Congress specifically made resources and men available to conduct the fighting in Vietnam.

CHALLENGES TO THE EXECUTIVE

In every instance in which the United States armed forces have been used abroad without a specific declaration of war by the Congress, the President, as Commander in Chief, has been able to point to a specific necessity or some rationale. He has cited his inherent authority with regard to national security to send the troops necessary to deal with the situation abroad. At times, actions of the President have been challenged in court and the courts have been very reluctant to hold that the President had acted outside his granted or implied powers. Thus, although a real Constitutional issue

may exist as to the employment of forces, there is sufficient basis for both the Executive and the Legislative Branches to claim authority over military or foreign policy decisions, so that either has been able to act if they felt so impelled.

The real court to which those disputed^s are taken is the court of politics, or the next election. Thus, the real check on the actions of either the President or the Congress in matters of national security are the inherent checks and balances of our political system.

Although foreign policy and national security affairs are often presented as an area where there is a bipartisan interest, this exists more in theory than in reality, and both of these areas are intensely^a political in their actual conduct.

EXECUTIVE v. CONGRESSIONAL STRUCTURE

There is, of course, a considerable structural difference in the Executive and the Legislative Branches of our government that make it more difficult for the Legislative Branch to take quick, positive and effective action to exercise its authority as against the Executive Branch. The

Executive Branch, by its very nature has a top executive who can control the actions of all the elements in the Executive Branch, coordinate its activities, make the final decision and see that it is implemented.

The Congress, of course, has no such structure. There is no one person within the Congress who can control and coordinate the activities of the members of the Congress and make sure that it speaks with one voice and with clear authority. This has always been essentially the case, but has become even more so in recent years. Certain powerful members of the Congress, aided by the rules of

the Congress, were able to control its activities in years past. In recent years, there has been a significant change in this tight organization and structure. The members, beginning with my particular class, have become increasingly independent, conscious of their own authority, independence and prerogatives, and have made significant changes in the rules, structure, operation and control in the Congress. Thus, in a sense, the Congress has been weakened in its ability to deal on a position of equal power with the Executive branch.

SINGLE ISSUE POLITICS

Additionally, politics has

become increasingly single-issue oriented. There are Congressmen and Senators and groups of people in the United States who are interested only in one particular issue. Particularly, with access to the modern communications media, they are able to marshal impressive and powerful forces on one single issue during a certain period of the year. The enormous pressure and disproportionate attention given to this single issue is a significant factor in the disintegration of centralized and orderly legislative process in the Congress and, of course, makes it difficult for the Congress to present a united front ⁱⁿ ~~with~~ relation to the Executive Branch.

These single-issue groups or individuals are from every part of the political spectrum -- both the right and the left, the foes and proponents of national defense, on any action taken in the name of national defense.

Another striking development in this age of single-issue politics is that the groups or organizations which so strongly espouse each particular position feel that if you vote against them on that issue, they are against you forever, although you might vote for them on a hundred other issues. For example, a Senator who might be a strong supporter of national defense

and voted for the Panama Canal treaties, might be viewed by these organizations as being soft on national defense without regard to all his other efforts and positions in national security affairs.

CONGRESSIONAL POWER INITIATIVES

The Congress is like a giant, however, slow to awaken, slow to anger; but powerful when provoked. There have been many things during the last 10 or 15 years that have aroused the public and thus have aroused the Congress. Vietnam and the sense that the Congress had been misled in the Tonkin Gulf resolution, no doubt

played a significant part in an awakening of the Congress.

WAR POWERS ACT

The best example of this, of course, has been the War Powers Act, which was adopted by the Congress in 1973. The War Powers Act was vetoed by President Nixon, but the veto was overridden by the House and the Senate. The President is now required to report on the use of armed forces within 48 hours unless the Congress approves the action within 60 days, the forces must be withdrawn. In other words, if the Congress does nothing, the President has a duty to

withdraw the forces. At least argueably, since the law obliges the President to inform the Congress, the Congress thus has the power to decide what the nation's actions will be.

This War Powers Act is the result of a long struggle which was characterized by a Foreign Relations Committee resolution of 1967 and the National Commitments resolution passed by the Senate in 1969. This resolution asserted that the use of armed troops abroad requires the consent of Congress.

TREATIES v. EXECUTIVE AGREEMENTS

A development that is of

particular concern to the Congress is the tendency of the Executive to use executive agreements rather than treaties. Treaties, of course, require consent of the Senate. The executive agreement requires only the signature of the Executive. In 1950, Congress enacted a law which directs the Secretary of State to compile and publish all treaties and executive agreements. The Executive, however, could withhold agreements from publication if he deemed it necessary in the interest of national security. Thereafter, legislation was passed in 1972 requiring the Executive to submit all executive agreements to the Congress. If the Executive believes

that certain of the agreements should be kept secret for national security purposes, they still must be made available to the particular committee with cognizance over the subject matter of the Executive agreement.

This whole subject of executive agreements has currently been of intense interest in the Senate because the Administration suggested that it might handle a potential SALT agreement as an executive agreement, rather than as a treaty, to avoid bringing it before the Senate. The Senate took immediate action to inform the Administration of its disapproval of this way of handling any SALT

agreement.

CONTROL OF FUNDS

In another area of concern, there of course can be no military commitments without funds to finance those commitments. As part of an effort to gain control of how monies are spent, Congress has created the Budget Impoundment and Control Act and has created the Congressional Budget Office, which develops comprehensive spending programs and sets rules to control Presidential use of funds that have been appropriated. Previously, there

were instances when the Congress would authorize and appropriate money for certain purposes and the President would refuse to spend the money for that purpose. Under the new legislation, Congress now has the ability to control the deferral or rescission of expenditures by the President.

Now, let me tell you in a little more detail about two of the Constitutional powers exercised by the Congress, that are little understood, both in their operation and in their effect. The first is nominations by the Executive Branch and the second is reprogramming actions.

NOMINATIONS

One of the key ways in which Congress, through the Senate Committee on Armed Services affects national security policy formulation and execution is through the confirmations procedure.

Under Article 2, Section 2 of the Constitution, the President may appoint officers of the United States, subject to the advice and consent of the Senate. As to civilian appointees this means, as a practical matter, that any nominee who is to be an Assistant Secretary or higher of one of the military departments or OSD must be confirmed by the Senate.

Before a nomination gets to the full Senate for a vote on confirmation it must go through our Armed Services Committee, since we have jurisdiction, oversight and legislative responsibility for all defense functions. In our committee practice, we want to be sure that there are no conflicts of interest between the nominee's past, present and future financial arrangements and the position he will hold. Our practices require:

1. Divestiture within 90 days after confirmation of securities in all firms doing business of more than \$10,000 a year with the Defense Department, unless in very special

circumstances other terms are agreed to;

2. Divestiture within 90 days of all oil company stocks, except those involved only in exploration and production;

3. Resignation from all posts with companies or other entities doing business of more than \$10,000 a year with the Department of Defense;

4. No arrangements for compensation for services performed during his or her term of office from companies doing business of more than \$10,000 a year with the Department of Defense; and

5. A commitment to serve at the pleasure of the President, with no arrangement for reemployment.

I should note that some 25,000 corporations have business of more than \$10,000 per year with the Department of Defense, so that the divestiture required is often very substantial.

This conflict of interest question is the one you hear the most about when someone is nominated for a high position. However, I believe there is an even more important, if less known, function of the process.

Since our committee has constant oversight of and responsibility for all defense matters, we are keenly aware of the fact that national security policy is not the product of a carefully structured process whereby a single document emanates at intervals from the executive setting out that policy. Rather, it must be discerned dimly from the defense budget presented, from executive branch statements, speeches, etc. In no small manner, national security policy formulation is the reverse of a top-down, structured process. Instead, it is the sum of actions and recommendations from the Assistant

Secretary level up. Thus the security philosophy, management practices and personal values and traits of the Presidential nominee are a key element in what finally emerges as national security policy.

Since we on the Committee are going to have to work on a constant and intense basis with the nominee, and since we are the one part of the Senate intimately knowledgeable as to the duties and responsibilities, history and projected programs of his department and position, we are in the best position to ascertain his philosophies. We must examine him to see if we can recommend him to the

full Senate as a person who will comply with our committee guidelines, will be frank with us and responsive to us and that his basic commitment to a rational national security policy is sound.

In addition, and partly as a result of the confirmation process, we establish a working relationship and a position of understanding and influence with the nominee after he is confirmed.

There have been attempts to dilute this process. Senate resolutions were introduced which

would undermine the Committee system in confirmations and, in my view, weaken the Senate in this important area. One of these resolutions would have established an Office of Nominations composed of non-elected Senate employees to review Presidential nominations. In my view, Senate employees not charged or familiar with or responsible for oversight of defense can't have the knowledge or breadth of understanding of what will be expected of the nominee to be able to make the individual, flexible judgments necessary. In these sensitive appointments, the Senate should be

able to rely on the recommendations of the Committee with intimate knowledge of and ongoing responsibility for the subject area. In the area of national defense particularly, no group of Senate employees, whose function is to mechanically examine nominees for all executive agencies, can possibly exercise the informed judgment to assure coherent policy and implementation from that agency.

REPROGRAMMING

The reprogramming process is required primarily because of the relatively long period of time between

submission of programs to Congress for approval and actual program execution by the Department of Defense. The primary aim of the reprogramming process is to retain Congressional control through the execution process and, at the same time, maintain a degree of flexibility in program execution by the Department of Defense.

Procurement Items

Reprogramming requests by the Department of Defense fall into two categories -- first, those requiring prior approval by the Congressional committees; and, second, those which

do not require a formal prior approval by Congressional committees.

Prior approval is required for reprogramming actions when:

1. Funds are added to items which were deleted or specifically reduced by the Congress;

2. There is an increase in the quantity to be procured for individual aircraft, missiles, naval vessels, combat tracked vehicles, other weapons and torpedoes;

3. It involves any item which

the Congress previously has established as being of "special interest", or which DOD otherwise knows to be of "special interest" to the Congress; or

4. There is a transfer of funds from an earlier fiscal year program to a later fiscal year program.

Without prior approval

reprogrammings fall into two categories which do not require approval by any Committees:

1. The first involves only notification within 48 hours of DOD approval. For instance, on procurement

this notification must be made where there is (a) an increase of \$5 million or more in a line item; or (b) the addition of a new line item in the amount of \$2 million or more involving no increase in quantity. (All this assumes no conditions of prior approval exist).

2. The second involves no notification at all. No notification and no prior approval is involved where a procurement line item is increased from the prior approved amount by less than \$5 million, or in the case of a new item of less than \$2 million. It is assumed that the prior approval conditions are absent.

Research and Development Items

The procedures for research and development reprogrammings are identical to those for procurement except as follows:

1. There is no difference in the prior approval requirements relative to additions of funds previously deleted or reduced, or increase in quantity, etc. It might be noted that a line item in RDT&E is a separate program which is called either a "program element" or "budget subactivity." For example, it may be a major weapon system such as the B-1 or F-15 aircraft; or it may be an exploratory development program such

as aircraft avionics technology.

2. With respect to non-prior approvals, the limit is \$2 million for line item increase versus the \$5 million limit in procurement. In addition, there must be notification of any new item even below \$2 million where it is expected to cost \$10 million or more over a three-year period.

There is a new procedure in the Armed Services Committee to try to improve our method of handling requests from the Department of Defense for the reprogramming of funds previously

authorized and appropriated. It is intended to provide more notice and Committee involvement in these matters.

Reprogramming requests are received throughout the year. Committee policy requires identification and justification of the intended new use of appropriated funds as well as the source of funds being requested for reprogramming. Some requests require prior Committee approval, while others are permitted unless objection is raised. Approval of the Committee is indicated by a letter from the Chairman to the Department of Defense.

Under the new procedure, I chair a small group of Committee members designated to act as the Chairman's representative to recommend on these matters and assure that Committee responsibilities are properly executed.

Copies of reprogramming requests are forwarded to each Committee member as they are received by the Committee staff. In the event the reprogramming request itself is classified, an unclassified summary is provided. The classified request with additional detail is available in the Committee.

The Committee is advised in

writing if a member has an objection to the request.

If no objections are raised within a two-week period for requests that require prior approval, it is assumed there are none. For the requests which do not require prior approval, if no objection is registered within seven days, it is assumed there are none.

At the conclusion of the two-week period or when objection is raised, the group that I chair reviews the issues and recommends any further action by the Chairman on behalf of the Committee.

CONGRESSIONAL STAFF

Committee Staff

I need to say something about the use of staff members in Congress, both committee and personal staff. The professional staff members of the Senate Armed Services Committee, for example, are in the main highly professional, experienced and competent individuals who serve the committee in general and the specific subcommittees in particular on matters coming before the committee. They are experts in their particular fields within the authorization process that goes on in the Senate Armed Services Committee. When the Department of

Defense forwards, through the President, its proposed authorization bill each year, the staff members of the committee analyze the portions of the bill that are within their particular experience and jurisdiction and begin to prepare the committee for the necessary hearings and mark-up of that bill.

They prepare the subcommittee chairman on all these matters. They arrange for witnesses to appear to discuss matters within the purview of the subcommittees and advise the subcommittee chairman as to what should be asked of the witnesses who appear. After all the necessary

testimony and information has been received on the various portions of the bill, the committee staff then prepares a recommended final version of the bill and a report to accompany the bill as reported out by the committee.

Personal Staff

Each of us who is a member of the committee is authorized by the Senate to employ a staff member to aid him in his functions on the committee. This individual is a member of the Senator's personal staff, but is designated by him to the committee and thus has the privileges

of a professional staff member of the Armed Services Committee. The individual that we hire keeps up with everything that is going on in the committee that is of interest to us, which is nearly everything, and particularly with those matters relating to the subcommittees of which we are a member. They advise us on the matters to come before the subcommittees and give us their judgment as to what action should be taken.

LOBBYING

I have talked to you before about the single-interest organizations that operate in the political scene. Let me

talk to you now about Executive and special interest and pressure groups and the affect they have on Congressional actions dealing with national security issues.

As you know, the Executive Branch is prohibited by law from lobbying. There is an intense effort and enormous resources expended, however, to inform the Congress of things the Executive Branch feels the Congress needs to know to do its work. As I understand it, there will be a course offered at this school later in the year on the relationships of military members to the Congress. I understand that it will be taught by Colonel Fred Sims, one of your class members. Fred

spent several years in legislative liaison for the Air Force and was one of the most effective members of the Department of Defense in informing the Congress of things it needed to know for national defense purposes.

Whether we call these people lobbyists, or whether we merely say that they inform the Congress, they serve essentially the same purpose that lobbyists serve for other segments of society, including corporations and special interest groups. Too often we get the idea that lobbying is something bad. Let me assure you that in almost every case, the lobbyist serves a very vital part in the production of good legislation.

One of the first things you learn about a lobbyist, and one of the first things a lobbyist learns, is that they are absolutely honest. If they ever come to a staff member or a member of Congress and tell him other than the truth, their effectiveness on the Hill is over as of that day. Any false information or incomplete information provided to a staff member or to a member of Congress will surely be found out and their ability to deal with that staff member or member of Congress is at an end.

They are invaluable sources of information on particular issues because that is their business and

they know more about that specific issue than anyone else. Therefore, if we need information in a hurry about a certain item, all we need ^{to} do is ^{to} find ^a ~~that~~ lobbyist who deals with the item, and he will provide that information consisely, accurately, and immediately. He will be entirely candid, telling you the strengths and weaknesses of his position and any other positions of which he is cognizant.

In my experience, they do not offer favors or attempt to unlawfully influence the members of Congress in any way. I am sure there are exceptions to this but they must be extremely

rare, since I have not personally experienced any of them. I am sensitive, however, to various groups, or individuals attempting to influence or pressure the Congress and I don't feel that their standing is such that they should have that right. One example of this was during this past year when the Administration proposed to sell arms to Saudi Arabia, Egypt and Israel. The government of one of those countries sent the member of its national assembly, who was in charge of arms procurement, to my office to attempt to influence my decision as to the arms transfer. I regard this as an unwarranted interference by another country in our legislative process and

informed the individual that he was out of line in approaching me. I told him that we did not send members of our Congress to lobby members of his national assembly on actions to be taken in that assembly and that I thought that it was entirely inappropriate for him to act so.

CONCLUSION

What we have done here today is ^{to} examine a structure and ^{to see} how it works. ~~that will be different if we examine it next year.~~

Our constitution and form of government is not static. It is a living, evolving thing that

accommodates to a changing world and changing political movement.

This is as it should be and must be in our dynamic, increasingly interdependent world. The structure and process had to change as our country expanded geographically and politically. It continued to change as our country evolved technologically. Now it must continue to change as a shrinking world and shifting political realities dictate.

In the Congress we will try to work with the Executive to provide an adequate national defense. If we feel the Executive is doing things that do

not contribute to necessary and real military preparedness, we will use all the powers I have described to make our views a part of the defense policy process.