

# CRS Report for Congress

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## Foreign Policy Roles of the President and Congress

June 1, 1999

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## **ABSTRACT**

The United States Constitution divides foreign policy powers between the President and the Congress so that both share in the making of foreign policy. The executive and legislative branches each play important roles that are different but that often overlap. Both branches have continuing opportunities to initiate and change foreign policy, and the interaction between them continues indefinitely throughout the life of a policy. This report reviews and illustrates 12 basic ways that the United States can make foreign policy. The practices illustrated in this report indicate that making foreign policy is a complex process, and that the support of both branches is required for a strong and effective U.S. foreign policy. For a detailed discussion of how war-making powers are shared, see War Powers Resolution: Presidential Compliance. CRS Issue Brief 81050. This report will be updated only as events warrant.

# Foreign Policy Roles of the President and Congress

## Summary

The United States Constitution divides the foreign policy powers between the President and Congress so that both share in the making of foreign policy. The executive and legislative branches each play important roles that are different but that often overlap. Both branches have continuing opportunities to initiate and change foreign policy, and the interaction between them continues indefinitely throughout the life of a policy.

This report identifies and illustrates 12 basic ways to make U.S. foreign policy. The President or the executive branch can make foreign policy through:

- 1) — responses to foreign events
- 2) — proposals for legislation
- 3) — negotiation of international agreements
- 4) — policy statements
- 5) — policy implementation
- 6) — independent action.

In nearly all of these circumstances, Congress can either support the President's approach or seek to change it. In the case of independent Presidential action, it may be very difficult to change policy in the short term; in the case of a legislative proposal by the executive branch or treaties and international agreements submitted to the Senate or Congress for approval, Congress has a decisive voice. In most cases Congress supports the President, but it often makes significant modifications in his initiatives in the process of approving them.

Congress can make foreign policy through:

- 1) — resolutions and policy statements
- 2) — legislative directives
- 3) — legislative pressure
- 4) — legislative restrictions/funding denials
- 5) — informal advice
- 6) — congressional oversight.

In these circumstances, the executive branch can either support or seek to change congressional policies as it interprets and carries out legislative directives and restrictions, and decides when and whether to adopt proposals and advice.

The practices illustrated in this report indicate that making U.S. foreign policy is a complex process, and the support of both branches is required for a strong and effective U.S. foreign policy.

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# Foreign Policy Roles of the President and Congress

## Introduction

The Constitution divides the foreign policy powers between the President and Congress but not in a definitive manner.<sup>1</sup> Edward S. Corwin wrote:

What the Constitution does, *and all that it does*, is to confer on the President certain powers capable of affecting our foreign relations, and certain other powers of the same general kind on the Senate, and still other such powers on Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve.<sup>2</sup>

Events have confirmed that together the President and Congress make foreign policy, but they have not resolved the question of which branch originates or finally determines policy. The two branches share in the process and each plays an important but different role. The question of who makes foreign policy does not have a more precise answer for several reasons.

First, U.S. foreign policy is not created in a vacuum as some sort of indivisible whole with a single grand design. Rather, making foreign policy is a prolonged process involving many actors and comprising dozens of individual policies toward different countries, regions, and functional problems.

Second, the complex process of determining foreign policy makes it difficult to decide who should be credited with initiating or altering any particular foreign policy. The two branches constantly interact and influence each other. Under these circumstances, it is difficult to trace an idea back to its origin, determine when a proposal actually influences policy, and decide when a modification creates a new policy.<sup>3</sup>

Third, the roles and relative influence of the two branches in making foreign policy differ from time to time according to such factors as the personalities of the President and Members of Congress and the degree of consensus on policy. Throughout American history there have been ebbs and flows of Presidential and

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<sup>1</sup>See appendix for excerpts from the U.S. Constitution relating to foreign policy powers.

<sup>2</sup>Corwin, Edward S. *The President, Office and Powers, 1787-1957*. New York, New York University Press, 1957. p. 171 (emphasis in original).

<sup>3</sup>Baldwin, David A. *Congressional Initiative in Foreign Policy*. *The Journal of Politics*, November 1966. p. 754-773.

congressional dominance in making foreign policy, variously defined by different scholars. One study classified the period 1789-1829 as one of Presidential initiative; 1829-1898 as one of congressional supremacy; and 1899 through the immediate post-World War II period as one of growing Presidential power.<sup>4</sup> Another study defined three periods of congressional dominance, 1837-1861, 1869-1897, and 1918-1936, with a fourth one beginning toward the end of the Vietnam War in 1973.<sup>5</sup> During the Reagan and Bush Administrations the pendulum swung back toward Presidential dominance, reaching its height in 1991 during Operation Desert Storm against Iraq.<sup>6</sup> In the post-Persian Gulf war era, both President and the Congress are confronted with issues in foreign policy that may well define which branch of government will play the dominant role during the first decade of the twenty-first century.

For many years a perception existed that the executive branch usually initiated foreign policy with the implication that this relegated Congress to an inconsequential role. Writing in 1950 Robert Dahl wrote, "Perhaps the single most important fact about Congress and its role in foreign policy, therefore, is that it rarely provides the initiative. Most often initiative springs from the executive-administrative branch."<sup>7</sup> In 1962 James A. Robinson studied 22 case studies of foreign policies over the previous 30 years and found three cases of congressional initiative: the 1943 repeal of the Chinese exclusion laws, the 1943 Fulbright resolution calling for postwar participation in an international organization, and the 1958 Monroney resolution proposing the International Development Association.<sup>8</sup> Francis O. Wilcox, who was Staff Director of the Senate Foreign Relations Committee from 1947-1955, and Assistant Secretary of State for International Organization Affairs from 1955-1961, has argued, however, that "some of the most imaginative and constructive foreign policies since World War II have originated in Congress."<sup>9</sup>

In the period after the Vietnam War, Congress reasserted its role in foreign policy. It on occasion initiated new policies and exerted decisive influence on policies initiated by the executive branch. One study on the subject concluded that "the fact remains that the President is still in charge of American foreign policy," but it noted also that "the American Congress has more power to influence foreign affairs than its counterpart in any other country."<sup>10</sup> Another study concluded: "For all the problems

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<sup>4</sup>Cheever, Daniel S., and H. Field Haviland, Jr. *American Foreign Policy and the Separation of Powers*. Cambridge, Harvard University Press, 1952. 244 p.

<sup>5</sup>Franck, Thomas M., and Edward Weisband. *Foreign Policy by Congress*. New York, Oxford University Press, 1979. 357 p.

<sup>6</sup>U.S. Congress. House. *Congress and Foreign Policy, 1991*. Washington, G.P.O., 1992, p. 19.

<sup>7</sup>Dahl, Robert A. *Congress and Foreign Policy*. New York, Norton, 1950. p . 58.

<sup>8</sup>Robinson, James A. *Congress and Foreign Policy-Making*. Homewood, Ill., Dorsey Press, 1967. p. 66.

<sup>9</sup>Wilcox, Francis O. *Congress, the Executive, and Foreign Policy*. New York, Harper and Row, 1971, p.14.

<sup>10</sup>Crabb, Cecil V., Jr., and Pat M. Holt. *Invitation to Struggle: Congress, the President and* (continued...)

caused by a resurgent Congress with unprecedented resources and a will to be involved more directly in foreign policy, the system is working much more the way the Founding Fathers devised it than we have seen in some time.”<sup>11</sup>

This report identifies and illustrates 12 major ways to make U.S. foreign policy, six utilized by the President or the executive branch, and six utilized by the Congress. No attempt has been made to measure how often the various practices are used. However, the findings of the report are consistent with Corwin’s classic statement that:

...actual *practice* under the Constitution has shown that, while the President is usually in a position to *propose*, the Senate and the Congress are often in a technical position at least to *dispose*. The verdict of history, in short, is that the power to determine the substantive content of American foreign policy is a *divided* power, with the lion’s share falling usually, though by no means always, to the President.<sup>12</sup>

This report does not attempt to define how a policy is made within a branch, as this is a complex and varied process and would require a detailed study of each case. Several case studies of this type are indicated in footnotes, and illustrations mentioned in the report highlight some of the many individuals and groups within each branch who contribute to policy formation.<sup>13</sup> Similarly, the report does not examine the influence of groups outside the executive and legislative branches, but the illustrations show that such groups, including the judiciary, interest groups, the press, and the public at large, can sometimes play an important role.

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<sup>10</sup>(...continued)

Foreign Policy. Washington, Congressional Quarterly Press, 1980. p. 3.

<sup>11</sup>Ornstein, Norman. The Constitution and the Sharing of Foreign Policy Responsibility. In The President, the Congress, and Foreign Policy. New York, Association of Former Members of Congress and the Atlantic Council of the United States, 1985. p.64.

<sup>12</sup>Corwin, The President, Office and Powers, p. 171(emphasis in original).

<sup>13</sup>For a collection of case studies, see the Congress and Foreign Policy committee prints, prepared by the Congressional Research Service and published by the House Foreign Affairs Committee, annually, from 1974 to 1992. These committee prints are subsequently cited as Congress and Foreign Policy, together with their pertinent year of coverage.

## The President as Initiator

Following are six basic ways the President or executive branch can originate or initially shape foreign policy. In these circumstances, Congress is put in the position of either responding positively to the President's initiative or seeking to adjust or reverse the impact of his position.

### Response to Foreign Events

Current events in foreign countries or a sudden action by a foreign government often challenge U.S. interests. As spokesman and head of the foreign service, the armed forces, the intelligence services, and the bureaucracy, the President usually responds to such events and thus initiates U.S. policy. Congress ordinarily supports the President, but on occasion seeks a change in policy.

For example, Congress supported President Reagan in the Falkland Islands crisis between Argentina and the United Kingdom. After Argentina in April 1982 seized and occupied the Falkland Islands, which the United Kingdom claimed as a crown colony, the U.S. executive branch sought to mediate the dispute. When Argentina refused one of the U.S. peace overtures, Secretary of State Alexander Haig announced that the United States would prohibit arms sales to Argentina and provide material support for British operations. Both Houses of Congress passed resolutions supporting the U.S. action siding with the United Kingdom.<sup>14</sup> The crisis ended in June 1982, and in December 1983 the Department of State lifted the ban on arms sales to Argentina.

Congress helped bring about a change in Administration-initiated policy in response to events in Lebanon.<sup>15</sup> In September 1983, Congress reached a compromise with the Reagan Administration, and agreed to authorize participation in the Multinational Force in Lebanon for 18 months<sup>16</sup>. After a terrorist bombing attack in Beirut on October 23, 1983, that killed more than 200 Marines, President Reagan first took the position that the United States had vital national interests in Lebanon and would continue to participate in the Multinational Force. Prominent Members of Congress questioned the policy, and some proposed an amendment to cut off funds for participation. While the amendment was defeated, criticism of the policy continued. The Subcommittee on Investigations of the House Armed Services Committee and a Department of Defense Commission headed by retired Admiral Robert Long both filed reports in December 1983 that questioned the U.S. ability to achieve its objectives by the use of the Marines. Public opinion polls also indicated that a majority of Americans thought the Marines should be withdrawn. On February 7, 1984, President Reagan announced that the Marines would be redeployed to ships

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<sup>14</sup>U.S. Congress. House. Congress and Foreign Policy, 1982. p. 10.

<sup>15</sup>For further discussions see Preece, Richard M. Congress and the Conflict in Lebanon. Congress and Foreign Policy, 1983, p. 11-28; and Laipson, Ellen. Congress and the Withdrawal of the Marines from Lebanon. Congress and Foreign Policy, 1984, p. 11-20.

<sup>16</sup>Multinational Force in Lebanon Resolution, P.L. 98-119, signed October 12, 1983.



off the coast of Lebanon, and in March he reported that U.S. participation in the Multinational Force had ended.

On August 2, 1990, President Bush responded to the Iraqi invasion of Kuwait the previous day by immediately applying full economic sanctions against Iraq, and, within a week, deploying U.S. Armed Forces to help defend Saudi Arabia against potential attack. In October Congress supported continued action through the United Nations, and enacted the economic sanctions into law. In January 1991, Congress authorized the use of the U.S. Armed Forces to implement U.N. Security Council resolutions.<sup>17</sup>

President Bill Clinton authorized U.S. actions in support of U.N. and NATO operations aimed at halting the fighting in the former territory of Yugoslavia, particularly in Bosnia. Under President Clinton, the United States participated in airlifts into Sarajevo, Bosnia, naval monitoring of sanctions, aerial enforcement of a “no-fly zone”, and aerial enforcement of safe havens. In December 1995, President Clinton authorized the deployment of over 20,000 American combat troops to Bosnia as part of a NATO-led peacekeeping force to help enforce the Dayton peace accords aimed at resolving the Bosnian conflict. Subsequently, in December 1996, President Clinton agreed to provide up to 8,500 American ground troops to participate in a NATO-led follow-on force in Bosnia termed the Stabilization Force (SFOR). These actions were taken by the President in the absence of express congressional approval, and despite continuing disputes between the Congress and the President over the proper course of action for the U.S. in the Bosnian conflict.<sup>18</sup>

Following the seizure of Haiti’s government by Haitian military leader Raul Cedras in July 1993 from its President Jean-Bertrand Aristide, the United Nations took a number of steps to support the restoration of Aristide to power, including an embargo, and in July 1994, authorizing a multinational force to facilitate the departure of the military leadership in Haiti. In mid September 1994, President Clinton sent a U.S. negotiating team to Haiti to urge the peaceful departure of the military junta, while ordering the U.S. military to prepare for an invasion of Haiti, if necessary, to restore President Aristide. The military junta agreed to leave Haiti peacefully in the face of an imminent U.S. invasion. Subsequently, the U.S. sent approximately 21,000 military forces to Haiti to disarm Haitian military and paramilitary forces, and to aid a U.N. peacekeeping operation in restoring civil government and order in Haiti. President Clinton undertook the Haiti operation without the prior approval of Congress and was criticized for this. Congress subsequently passed S.J. Res. 229 in October 1994 (signed as P.L. 103-423) which stated the sense of Congress that the

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<sup>17</sup>See Mark, Clyde. Congress and Iraq, 1990, in Congress and Foreign Policy, 1990, p. 109-137, and (name redacted), War and Peace in the Middle East, Congress and Foreign Policy 1991, p. 21-53.

<sup>18</sup>See Grimmett, Richard F. War Powers Resolution: Presidential Compliance. CRS Issue Brief 81050. Woehrel, Steven and (name redacted). Bosnia-Former Yugoslavia and U.S. Policy CRS Archived Issue Brief 91089 and Bowman, Steven R. Bosnia: U.S. Military Operations. CRS Issue Brief 93056.

President should have sought congressional approval before deploying U.S. forces to Haiti and supported a prompt and orderly withdrawal as soon as possible.<sup>19</sup>

### **Administration Proposal for Legislation**

On occasion, the executive branch wants to begin a foreign policy program that requires legislation or appropriations, and accordingly proposes legislation to Congress. Congressional approval in this situation is essential. Congress may play a more or less active role in the development of the legislation, modifying the Administration bill or developing entirely new legislation of its own.

The classic example of a policy proposed by the Administration but subsequently developed by both branches working together cooperatively is the Marshall plan.<sup>20</sup> On June 5, 1947, Secretary of State George Marshall proposed U.S. assistance for European recovery on condition that the European nations initiate and agree on plans for an aid program. The Western European governments responded with a proposal for a program based on 4 years of U.S. assistance. To allow sufficient time for consideration, President Truman requested an interim aid program that was passed by Congress in December 1947. He then submitted to Congress the proposal for the longer term European Recovery Program. Congress created a Select Committee on Foreign Aid that made an independent study of the needs in Europe. The Senate Foreign Relations and House Foreign Affairs Committees also held extensive hearings, and the legislation that emerged was widely considered to be the product of a bipartisan, joint effort of both branches.

Since then Presidents have annually proposed foreign assistance programs that Congress has authorized or appropriated after modifying as it saw fit, often using the legislation as a vehicle for initiatives of its own. In 1978, for example, Congress required a new emphasis in both bilateral and multilateral aid for programs designed to meet basic human needs, and also launched a Women in Development program to promote attention to women in the economic development process.<sup>21</sup> After democratic reforms occurred in Poland and Hungary during 1989, President Bush proposed an aid package and trade benefits for the two countries. As the year continued and all of Eastern Europe was transformed by the replacement of Communist governments with democratic reforms, Congress enlarged the package and urged more active U.S. support for the growing democratic movements.<sup>22</sup>

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<sup>19</sup>See Taft-Morales, Maureen E. Haiti Under President Preval: Issues for Congress. CRS Issue Brief 96019.

<sup>20</sup>For further discussion see Hutchinson, Martha Crenshaw. The Marshall Plan Model: A Case Study of the Congressional Information Problem. In Executive-Legislative Consultation on Foreign Policy, Strengthening the Legislative Side. House Foreign Affairs Committee Print, April 1982. p. 77-85.

<sup>21</sup>See Sanford, Jonathan E. International Economic Assistance. In Congress and Foreign Policy, 1978. p. 73-100.

<sup>22</sup>See Miko, Francis. Congress and the Transformation of Eastern Europe in 1989, in Congress and Foreign Policy, 1989, p. 19-37.

President Clinton in April 1993 proposed a major increase in United States assistance to Russia following a summit at Vancouver, Canada, with Russian Prime Minister Boris Yeltsin. The \$1.6 billion U.S. assistance package, using existing appropriated funds, included more concessional terms for agricultural loans and an increase in assistance targeted at privatization. Further, funding was targeted at resettling Russian officers and providing employment training to assist their return to civilian life, while facilitating their withdrawal from the Baltics. The President stated that 75% of the assistance would be used outside of Moscow to make it more highly visible to the average Russian citizen than earlier U.S. aid programs. All such assistance efforts were aimed at advancing democratization in Russia.<sup>23</sup>

## **Negotiation of International Agreements**

The power of negotiation gives the executive branch a dominant role in making foreign policy through international agreements, but the President must take into account congressional opinion because often agreements must be approved by the Senate or Congress. Congress also influences agreements by placing in legislation instructions and views concerning international agreements, indicating through various means what kind of agreement would be acceptable, and attaching reservations or other conditions when approving an agreement.

A few international agreements might be called “sole executive agreements” because the President considers that he has the authority to conclude them under his own powers and does not submit them to the Senate as treaties nor to Congress for approval.<sup>24</sup> Examples are the Yalta Agreement of 1945, the Vietnam Peace Agreement of 1973, the Iranian Hostage Agreement of 1981, and the Afghanistan Settlement Agreement of April 14, 1988.

Most international agreements, however, have some form of congressional participation. The Senate must approve treaties by a two-thirds majority. The bulk of executive agreements are either authorized by Congress prior to their conclusion or approved after their conclusion, and might be called congressional-executive agreements. As an example of prior action, Congress has authorized the executive branch to conclude agreements on military and economic assistance, space and nuclear energy cooperation, and foreign trade, and has set forth goals, guidelines, and criteria in the authorizing legislation. As an example of action after conclusion, Congress approved the SALT I interim agreement of 1972 by a joint resolution, with the Jackson amendment which requested that the President seek a future treaty that would not limit the United States to levels of strategic forces inferior to Soviet levels.

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<sup>23</sup>For further discussion see Tarnoff, Curt. U.S. Assistance to the Soviet Union and Its Successor States 1991-1996: A History of Administration and Congressional Action. CRS Report 98-43F. January 14, 1998. 31p.

<sup>24</sup>For further discussion of various types of international agreements, see *Treaties and Other International Agreements: The Role of the United States Senate*. A Study Prepared for the Committee on Foreign Relations by the Congressional Research Service. Washington, G.P.O., November 1993. S. Prt. 103-53. 384 p.

In the case of trade agreements such as the North American Free Trade Agreement (NAFTA) and agreements negotiated under the auspices of the General Agreement on Trade and Tariffs (GATT), Congress has authorized negotiations in advance but required that it approve the agreement prior to its implementation.<sup>25</sup> The implementing legislation for both the NAFTA and the GATT Uruguay Round agreements was considered under so-called “fast-track” procedures in 1993 and 1994 respectively. This process had been developed during the Nixon and Ford Administrations to protect a President’s ability to negotiate trade agreements with some confidence that they would not be undermined later by Congress through the traditional rules applied to legislation. Under “fast-track” rules, Congress was given 90 days to take action on the implementing bill after its formal introduction. Congress could not amend the bill. Each congressional committee of jurisdiction was given 45 days to review the proposed legislation. The proposed bill was then only subject to a yes or no vote in the House and the Senate. Since Congress could not amend the final legislation, a practice developed over the years whereby informal committee markup sessions were held on the draft implementing bills to indicate to the President key areas of Congressional concern regarding the specific trade legislation. This process afforded the President the opportunity to address these concerns as he deemed appropriate prior to submitting a final bill to implement the trade agreement. The debates over the NAFTA and the GATT Uruguay Round agreements were very contentious. Following passage of the implementing vehicle for the latter in a lame duck session of Congress in late 1994, the President’s authority to use “fast-track” procedures lapsed. A subsequent effort by the Clinton Administration to secure renewal of this authority was dropped in late 1997 due to insufficient bipartisan support for granting it. In the fall of 1998 a bill to restore “fast-track” authority failed to pass the House of Representatives<sup>26</sup>

Legislative-executive branch interchange has been especially complex in the treaties relating to strategic arms reductions. In preparation for the Strategic Arms Reduction Treaty (START), the Senate and House formed Observer Groups to monitor the negotiations. After the START Treaty was submitted to the Senate on November 25, 1991, the Soviet Union ceased to exist and Senators worked with the Administration in deciding how to handle the new situation. A new protocol amending the treaty was negotiated in Lisbon with the Soviet successor states. The Senate approved the START Treaty on October 1, 1992, with several conditions, including that Belarus, Kazakhstan, Russia, and Ukraine be legally bound to all the obligations of the Soviet Union in the treaty.

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<sup>25</sup>Sek, Lenore. Congress and Trade Negotiating Authority. In Congress and Foreign Policy, 1991, p. 103-117.

<sup>26</sup>For additional background see: Grimmett, Jeanne J. Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than as Treaties. CRS Report for Congress 97-896A. September 29, 1997. 6p. Howe, Robert H. North American Free Trade Agreement (NAFTA) and Related Issues: A Checklist of CRS Products. CRS Report for Congress 97-907L. October 9, 1997. 4p. Wilson, Arlene. The GATT and the WTO: An Overview. CRS Report for Congress 95-424E. March 27, 1995. 6p. Pregelj, Vladimir N. Trade Agreements: Renewing the Negotiating and Fast-Track Implementing Authority. CRS Issue Brief 97016.

## Policy Statements

The President also establishes U.S. foreign policy through unilateral statements or joint statements issued with other governments. Sometimes unilateral statements are broad descriptions of American goals and objectives. In an address to the United Nations on September 21, 1992, President Bush called for strengthening the peacekeeping capabilities of the United Nations. Other times, the President articulates policy on a specific issue. In the State of the Union Address of January 28, 1992, President Bush proposed that the United States and Russia eliminate all their land-based multiple warhead ballistic missiles. On April 5, 1991, President Bush announced the United States would join international efforts to airdrop relief supplies to Kurdish refugees along the Iraqi-Turkish border. In January 1994, the Clinton Administration proposed the expansion of the alliance at the NATO summit. With Congressional support over the next four years, a number of gradual steps were taken leading to the Senate giving its consent to the amendment of the North Atlantic Treaty on April 30, 1998, by a vote of 80-19, permitting the admission of Poland, the Czech Republic and Hungary to the alliance.<sup>27</sup>

Joint statements—policy statements made with other countries—are not legally binding international agreements, but they commit the President to a course of action. At the conclusion of the summit conference in Tokyo on May 5, 1986, for example, leaders of seven nations including the United States issued a joint statement pledging to fight terrorism through specified economic and diplomatic actions. At the conclusion of the economic summit of the Group of Seven on July 8, 1992, the leaders issued a communique embodying a wide range of policies including support for the strategy of cooperation between the Russian Government and the International Monetary Fund.

Congress may support the policy enunciated by the President, attempt to change it, or find a way to participate in the further development of the policy. After the Conference on Security and Cooperation in Europe in Helsinki, on August 1, 1975, President Ford and 34 other heads of state signed the Final Act of the Conference that provided for the freer flow of people and information between East and West Europe. Congress by legislation established a Commission on Security and Cooperation in Europe to monitor the implementation of the accords.<sup>28</sup> Since that time the Commission, 12 of whose 15 members are Members of Congress, has closely monitored the accords and played an active role in development of U.S. policy in this area.

The executive branch makes a policy statement when it casts the U.S. vote in international organizations. Most measures adopted by international organizations, such as United Nations General Assembly resolutions, are not legally binding, but they put the United States on record as for or against a proposed course of action. The executive branch also determines the U.S. position on resolutions of the United

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<sup>27</sup>Katzman, Kenneth. War and Peace in the Middle East. Congress and Foreign Policy, 1991, p. 21-53. Gallis, Paul E. NATO: Congress Addresses Expansion of the Alliance. CRS Issue Brief 95076.

<sup>28</sup>P.L. 94-304, approved June 3, 1976.

Nations Security Council, which many authorities consider binding, such as Resolution 678 (1990) calling for nations to use “all necessary means” to uphold earlier resolutions aimed at getting Iraq to withdraw from Kuwait.

Congress sometimes influences the U.S. vote in international organizations. It has on several occasions directed U.S. representatives in international financial institutions to vote in a specified manner. For example, in 1992 Congress provided that the Secretary of the Treasury should direct the U.S. Executive Director of the Inter-American Development Bank to vote against funding for any project of the Multilateral Investment Fund if the project was likely to cause loss of jobs in the United States. Members of Congress also serve on inter-parliamentary groups such as the North Atlantic Assembly and the parliamentary assembly of the Organization on Security and Cooperation in Europe, where their views may affect the perspectives and votes of members from other participating nations.<sup>29</sup>

Whenever implementation of the measures promised by the executive in unilateral or joint statements requires legislation or appropriations, Congress has more power in deciding whether to support or modify U.S. policy. When the Administration pledges funds to the multilateral development banks, for example, the funds must be authorized and appropriated by Congress. The United States could not increase its quota in the International Monetary Fund for assistance to Russia in 1992 until Congress appropriated the necessary funds.<sup>30</sup>

## **Policy Implementation**

Even when Congress establishes foreign policy through legislation, the Administration continues to shape policy as it interprets and applies the various provisions of law. This is illustrated in arms sales policy. Congress has established the objectives and criteria for arms sales to foreign countries in the Arms Export Control Act, and it has required advance notification of major arms sales and provided procedures for halting a sale it disapproves. But the executive branch makes the daily decisions on whether or not to sell arms to specific countries and what weapons systems to provide. As an example, on September 14, 1992, President Bush notified Congress of his intention to sell 72 F-15 fighter aircraft to Saudi Arabia, and after the 30-day congressional review period expired, the sale proceeded.

Congress has found it necessary to maintain close supervision to prevent sales, particularly to Middle Eastern countries, that it did not approve. In some cases its actions had the effect of halting sales, and it has frequently brought about changes in proposed arms sales packages.<sup>31</sup> In 1985 Congress passed a joint resolution (P.L. 99-162) prohibiting a proposed sale of certain advanced aircraft and air defense systems

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<sup>29</sup>Foreign Operations Appropriations Act, Title I, P.L. 102-391, signed Oct. 5, 1992.

<sup>30</sup>P.L. 102-391, signed Oct. 6, 1992.

<sup>31</sup>For further information see Grimmett, Richard F. Executive-Legislative Consultations on U.S. Arms Sales. U.S. Congress. House. Committee on Foreign Affairs. Committee Print, December 1982. 39 p. See also Arms Sales, Congressional Review Process, by Grimmett, Richard F. CRS Report for Congress 96-971F. 6p.

to Jordan prior to March 1, 1986, unless direct and meaningful peace negotiations between Israel and Jordan were underway. After the date passed, the Administration did not propose the sale, apparently in the belief it would be disapproved by Congress. In 1986 both Houses passed a joint resolution disapproving a sale of advanced missiles to Saudi Arabia, and the President vetoed the resolution; the Senate sustained the veto by a 66-34 vote, but only after the Administration removed Stinger (hand-held) missiles from the package.

Since the 1980s various Administrations have used their authority to establish regulatory guidelines for the export of U.S.-origin dual-use technologies. In the case of exports to China since the 1989 Tiananmen Square crackdown, U.S. law has required that China cannot obtain commercial satellites or related technology from the United States unless the President issues a waiver of this restriction, on a case-by-case basis, on the grounds that such a transaction is in the U.S. national interest or because China has made reforms in its human rights or political practices. In March of 1996, President Clinton transferred authority for issuing export licenses from the State Department to the Commerce Department. Subsequently, when it was discovered that two U.S. companies had shared technical information regarding the cause of an explosion of a Chinese rocket launching a U.S. commercial satellite, without having secured a license to do so from the State Department, a Justice Department investigation was launched. In the wake of the controversy over this transfer of technical information regarding satellites to China and charges that insufficient scrutiny was being given to security issues involved in such prospective transfers, Congress by an amendment to the FY1999 National Defense Authorization Act (P.L. 105-261), transferred authority to license commercial satellite and related data exports from the Commerce Department back to the State Department, effective in March 1999.

## **Independent Action**

Occasionally the President undertakes a dramatic or sudden foreign policy action before Congress is fully informed about it. Congress then is faced with the dilemma of supporting the action or being charged with undercutting the President before the world. Congress usually supports the President, but on occasion it tries to halt or reverse the policy or pass legislation to restrain the President from similar actions in the future.

When President Reagan launched a military invasion of Grenada on October 24, 1983, Congress essentially supported the President in his stated effort to prevent the formation of a Communist foothold there. Although both Houses of Congress passed separate measures that would invoke the War Powers Resolution, neither measure was passed by both Houses.<sup>32</sup> Congressional leaders apparently received assurances

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<sup>32</sup>The War Powers Resolution, P.L. 93-148, was passed over the veto of President Nixon in November 1973 to assure that both the President and Congress participate in decisions that might involve the United States in war. It requires the President to consult with Congress in every possible instance prior to the introduction of armed forces into hostilities or situations of imminent hostilities, and establishes a time limit of 60-90 days for U.S. forces to remain

(continued...)

from the White House that the troops would be out within 60 days, and public opinion strongly supported the action. Congress also supported the President's action by approving \$15 million for grant economic assistance programs to Grenada.

Similarly, when President Reagan ordered the bombing of Libya on April 15, 1986, to counter state-supported terrorism, and when President Bush ordered the invasion of Panama on December 20, 1989, to apprehend General Manuel Noriega, most Members supported the President's effort. Widespread public support greeted the President's action and was also a factor in determining the congressional response.

In another instance, President Clinton addressed a financial crisis in Mexico, after a devaluation of the peso in late December 1994. In an effort to prevent Mexican default on billions of dollars worth of debt obligations, in early 1995, the President's economic advisors crafted a package of support for Mexico that did not require a Congressional vote on the controversial proposal. This action was taken when it appeared possible that Congress would not enact the Administration's legislation to deal with the crisis. The independent initiative by President Clinton included \$20 billion in credits from the Exchange Stabilization Fund (ESF) of the Treasury Department, which is normally used to stabilize the U.S. dollar's value; \$10 billion in credits from the Bank for International Settlements, and \$17.8 billion from the International Monetary Fund (IMF). The Clinton Administration's independent intervention in the Mexican peso crisis led to significant criticism in Congress, but efforts to modify or block it were either defeated or abandoned.<sup>33</sup>

Occasionally, however, Congress significantly refines or alters a policy independently undertaken by the President. This was the case in the 1979 policy change toward the People's Republic of China and Taiwan. On December 15, 1978, President Carter announced suddenly that the United States would establish diplomatic relations with the People's Republic of China on January 1, 1979, and terminate the defense treaty with the Republic of China on Taiwan after the one year's notice required by the treaty. The Administration also submitted legislation to govern future relations with Taiwan.

While few Members of Congress opposed the establishment of relations with China, a move anticipated since President Nixon's trip to China in 1972, many Members sought to modify the practical implications of the new policy and reassure allies in the Pacific. Congress added sections to the Taiwan Relations Act to affirm that the United States would consider any nonpeaceful effort against Taiwan as a threat to the Western Pacific and would provide Taiwan with defensive arms to maintain a sufficient self-defense capability. Congress also made modifications in the

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<sup>32</sup>(...continued)

in such situations without congressional authorization.

<sup>33</sup>For background see Storrs, K. Larry. Mexico-U.S. Relations: Issues for Congress. Issue Brief 97028, and "Clinton Leads Mexico Bailout Effort," Congressional Quarterly Almanac 1995, pp. 10-16 and 10-17.



legislation aimed at continuing economic ties and placing Taiwan-U.S. relations on a firmer legal basis.<sup>34</sup>

Senator Barry Goldwater and other Members of Congress filed suit against the President for terminating the security treaty with the Republic of China without the approval of two-thirds of the Senate or a majority of both Houses of Congress. Senator Goldwater also introduced legislation to bar the President from terminating other defense treaties without congressional participation. While neither effort was successful, they illustrated that in undertaking independent action, the President risks punitive action by Congress that may reduce future flexibility in foreign policy actions.

## **The Congress as Initiator**

Following are six basic ways in which Congress can originate or shape foreign policy. In these circumstances, the executive branch is put in the position of responding positively to the congressional initiative or seeking to adjust or reverse its impact on the course of foreign policy.

### **Resolutions and Policy Statements**

Every year Members of Congress introduce large numbers of simple or concurrent resolutions stating the sense of the House, Senate, or Congress on foreign policy, and many such resolutions are adopted. Many observers are skeptical about the effectiveness of these sense of the House, Senate, or Congress resolutions. Like Presidential policy statements, they express the policy of a single branch of government, but their effect is often weaker because Congress does not execute policy. Since simple and concurrent resolutions are not legally binding, the executive branch often ignores them in carrying out foreign policy.

Nevertheless, sometimes such resolutions play a significant role in foreign policy by launching a new idea or promoting a new policy. S. Res. 264, introduced by Senator A. S. Mike Monroney, and adopted July 23, 1958, led to the establishment of the International Development Association as an affiliate of the World Bank designed to make low-interest, long-term loans. In 1973 the Senate adopted S. Res. 71, introduced by Senator Claiborne Pell, calling for an international agreement “prohibiting environmental or geophysical modification activity as a weapon of war.” Such an agreement was subsequently negotiated and ratified by the United States in 1979. In 1979 the House passed H. Res. 321 urging the United Nations to convene an emergency session of the General Assembly to deal with the refugee crisis in Southeast Asia. This added to other calls for such a conference and subsequently a United Nations Conference was convened in July 1979. H.Con. Res. 248, adopted September 17, 1990, called for a higher priority for environmental concerns and urged increased attention to the linkage between the environment and national security.

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<sup>34</sup>For further discussion see Sutter, Robert. Congress and U.S. Policy in Asia: New Relationships with China and Taiwan. In Congress and Foreign Policy, 1979, p. 54-71, and Executive-Legislative Consultations on China Policy, 1978-1979. House Foreign Affairs Committee Print, June 1980. 42 p.

Holding hearings on resolutions has occasionally given impetus to a policy even though the resolution itself did not pass. In 1967 Senator Pell introduced S. Res. 172 relating to international regulation of ocean activities. The Administration opposed the resolution and it was not adopted, but later the concept came to fruition in the seabed arms control treaty of 1971.

Simple and concurrent resolutions also serve as a channel of communication between Congress and foreign countries. While often the communications to foreign governments are formal messages of sympathy, congratulations, and appreciation, at other times they are more substantive. H. Con. Res. 484 of August 8, 1988, called on President Zia of Pakistan, consistent with his pledge of May 29, 1988, to hold free and fair elections not later than November 16, 1988. H. Con. Res. 136 of May 24, 1989, called on the Chinese Government to resolve the political crisis in China without violence. Congress annually passed resolutions calling for Baltic Freedom and commemorating “Captive Nations Week” from 1959 until independence was achieved by Lithuania, Latvia, and Estonia in 1991.

Sense of the Congress resolutions also provide a vehicle for support or advice to the President on foreign policy. After the U.S. military intervention in the Dominican Republic in 1965, for example, the House passed H. Res. 560 supporting the President in any action he deemed necessary to prevent Communist subversive aggression in the Western Hemisphere.<sup>35</sup> On May 5, 1986, the House adopted H. Res. 424 supporting the President’s policy in Libya by expressing gratitude to the United Kingdom for allowing U.S. bombers stationed there to participate in the April 14, 1986, raid aimed at terrorist bases in Libya.

Congressional concerns over United States involvement in the developing internal conflicts in former Yugoslavia—Bosnia and Kosovo in particular—led to passage of sense of the Congress resolutions. Section 8100 of the Defense Appropriations Act for fiscal year 1995 (P.L. 103-335, signed September 30, 1994) stated the sense of Congress that DoD funds should not be made available for the purpose of deploying U.S. armed forces to participate in implementation of a peace settlement in Bosnia, unless previously authorized by Congress. On March 11, 1999, the House passed H.Con. Res. 42 by a vote of 219-191, expressing the sense of Congress that the President was authorized to deploy U.S. troops to Kosovo as part of a NATO peacekeeping operation, subject to conditions and various reporting requirements. On March 23, 1999, the Senate by a vote of 58-41 passed S. Con. Res. 21 expressing the sense of the Congress that the President was authorized to conduct “military air operations and missile strikes in cooperation with our NATO allies against the Federal Republic of Yugoslavia (Serbia and Montenegro). This Senate concurrent resolution was passed in reaction to the Serbian military actions in Kosovo and President Clinton’s request, on March 23, 1999, for “legislative support” of his actions to deal with the Kosovo crisis. Subsequently, on April 28, 1999, the House

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<sup>35</sup>For additional information see: Hutchinson, Martha Crenshaw. *The Dominican Republic Intervention in 1965: A Case Study of the Congressional Information Problem*. In U.S. Congress. House. Committee on Foreign Affairs. *Executive-Legislative Consultation on Foreign Policy: Strengthening Foreign Policy Information Sources for Congress*. Committee Print, February 1982. Washington, G.P.O., 1982. p. 73-84.

by a tie vote of 213-213 defeated S.Con. Res. 21, as well as a joint resolution, H.J. Res. 44, declaring war against Yugoslavia. Through these votes at least one house of the Congress indicated its skepticism of current Administration policy toward resolving the Kosovo conflict<sup>36</sup>

## Legislative Directives

Congress sometimes initiates a foreign policy by using legislation to establish a new program, set objectives and guidelines, authorize and direct the executive branch to undertake specified activities, and by earmarking appropriations to be used in a specified way. The executive branch influences this kind of policy initiative because Members regularly seek Administration views in the process of formulating legislation, the President must approve legislation unless it is passed over a Presidential veto, and the executive branch implements the legislation.

As examples, in 1991 Congress took the lead in using defense funds to provide assistance to the former Soviet Union, authorizing and appropriating funds to dismantle Soviet nuclear weapons and provide military transportation for humanitarian assistance.<sup>37</sup> In 1992 Congress placed new sanctions and controls against Iran, Iraq, and nations or persons who assisted them in acquiring weapons of mass destruction.<sup>38</sup>

In 1997 and 1998, Congress was principally responsible for advancing legislation aimed at elevating the importance of combating religious persecution worldwide among U.S. foreign policy objectives. On October 27, 1998, the International Religious Freedom Act was signed into law (H.R. 2431, P.L. 105-292). This act established within the State Department an Office of International Religious Freedom headed by an Ambassador at Large, subject to confirmation by the Senate. This Ambassador is charged with, among other things, recommending appropriate U.S. government responses where the right to religious freedom abroad is violated, including preparing an annual report on country practices regarding religious freedoms. This law specifies sanctions against countries if they are determined to have engaged in or tolerated particularly severe violations of religious freedom.<sup>39</sup>

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<sup>36</sup>For background see: Kim, Julie and Steven J. Woehrel. Bosnia-Former Yugoslavia and U.S. Policy. CRS Issue Brief 91089 and Woehrel, Steven and (name redacted). Kosovo and U.S. Policy. CRS Issue Brief 98041. U.S. Congress. Congressional Record, Senate, March 23, 1999, p.S3101 and Congressional Record, House, April 28, 1999, pp. H2440-H2441, H2451-H2452 (daily edition).

<sup>37</sup>Conventional Armed Forces in Europe Treaty Implementation Act, P.L. 102-228, December 12, 1991. For case study, see Congress and the Transformation of the Soviet Union, by Nichol, James P. in Congress and Foreign Policy, 1991, p. 55-81.

<sup>38</sup>Iran-Iraq Arms Non-Proliferation Act of 1992, Title XVI of National Defense Authorization Act for Fiscal Year 1993, P.L. 102-484, signed October 23, 1992.

<sup>39</sup>For background see: Bite, Vita. Religious Persecution Abroad: Congressional Concerns and Actions. CRS Report 97-968F.

## Legislative Pressure

Sometimes Congress pressures the executive branch into a new direction in foreign policy by threatening to pass legislation, even though the legislation is not enacted, or by continuing to exhort a policy through many means.

An example is the congressional effort in the 1980s to pass legislation imposing economic and other sanctions against South Africa. The effort was widely seen to have prodded the Reagan Administration to establish limited economic sanctions. Dissatisfied with the Administration's policy of "constructive engagement" and quiet diplomacy to bring an end to apartheid in South Africa, the House in 1983 approved legislation applying sanctions against South Africa as part of an extension of the Export Administration Act, but the bill was rejected by the Senate. Toward the end of 1984, American civil rights leaders began daily protests at the South African Embassy in Washington to focus greater attention on racial violence in South Africa and the repressive policies of the white minority government in South Africa. In June 1985 the House passed H.R. 1460 imposing sanctions and threatening a future cutoff of U.S. investment. The Senate followed with S. 995 providing military sanctions. The conference report called for a compromise that included a ban on U.S. import of South African Krugerrands. Before the Senate voted on the final bill, on September 9, 1985, President Reagan issued an executive order imposing sanctions that banned computer sales to the South African police and military and other government agencies that enforce apartheid, exports of nuclear technology to South Africa, and further bank loans to the South African Government. Later the President banned the importation of South African Krugerrands. Nonetheless in 1986 Congress enacted comprehensive sanctions against South Africa over the veto of President Reagan.<sup>40</sup>

Congress for several years pressured President Bush to take a greater leadership role in protecting the international environment. In 1989 many Members criticized the President for not leading a world effort to deal with global warming. After numerous congressional efforts to persuade the administration, including letters, hearings, and a Senate amendment calling for a global conference on the environment in 1989, the President offered to host an international meeting as a step toward negotiations on an international agreement to deal with global warming. Congress also pressed other countries to take environmentally beneficial action in foreign aid legislation.<sup>41</sup>

On June 9, 1998, Congress passed the Iran Missile Proliferation Sanctions Act (H.R. 2709) which would have imposed various sanctions on foreign entities that aided Iran's efforts to develop ballistic missiles. This legislation was vetoed by President Clinton on June 23, 1998. Nevertheless, passage of this bill may have

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<sup>40</sup>Comprehensive Anti-Apartheid Act of 1986, P.L. 99-440, signed October 2, 1986. See The 99<sup>th</sup> Congress and South African Sanctions, by Shepard, Robert B. in Congress and Foreign Policy, 1985-86, p. 13-36.

<sup>41</sup>See Congress and International Environmental Issues in 1989, by Tarnoff, Curt in Congress and Foreign Policy, 1989, p. 121-139.

induced the Clinton Administration to act more forcefully with Russia in order to get it to curtail its technological assistance to Iran's ballistic missile program.<sup>42</sup>

Another example of legislative pressure is the reaction of various Senators to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. This protocol is the implementation vehicle for the Climate Change Convention. The Kyoto Protocol was concluded on December 10, 1997 by delegates of 161 nations and sets binding targets for reduction of emissions of greenhouse gases by developed nations. The United States signed it on November 12, 1998, but it has not been submitted to the Senate for its advise and consent, as of this writing, due, in part, to indications given by some Senators that it would be rejected unless their key concerns are addressed first. The Clinton Administration has been attempting to secure actions from various nations that would assist in convincing the Senate that the Kyoto Protocol should be approved.<sup>43</sup>

### **Legislative Restrictions/Funding Denials**

Congress has been most visible in its foreign policy role when it has placed legislation prohibitions or other limitations on the President's freedom of action in foreign affairs. Often these measures have been amendments to legislation authorizing or appropriating funds that the President was unlikely to veto. The use of funding restrictions or denials by Congress is a classic illustration of the "power of the purse" under the Constitution. Unlike other legislative action by Congress, its use is not subject to serious challenge by the President as an unconstitutional infringement on the President's foreign policy powers. Major legislative-executive confrontations have occurred when such restrictions have been passed despite the opposition of the President. Some examples follow.

On January 23, 1973, President Nixon announced the signing of the Paris peace accords to end U.S. involvement in the Vietnam war, but attacks by the Khmer Rouge in Cambodia continued and the United States resumed bombing in Cambodia. The Administration wanted to maintain freedom of U.S. action if North Vietnam or its Communist associates violated the accords. But Congress effectively halted such military action when it passed over the President's opposition amendments to funding legislation stating that after August 15, 1973, no funds under any legislation could be used to finance combat activities by United States military forces in, over, or from off the shores of North Vietnam, South Vietnam, Laos or Cambodia.<sup>44</sup>

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<sup>42</sup>For background see: Katzman, Kenneth. Iran: Current Developments and U.S. Policy. CRS Issue Brief 93033.

<sup>43</sup>For background see: Fletcher, Susan R. Global Climate Change Treaty: The Kyoto Protocol. CRS Report for Congress 98-2ENR; Ackerman, David M. Global Climate Change: Selected Legal Questions About the Kyoto Protocol. CRS Report for Congress 98-349A; Morrissey, Wayne A. and John R. Justus, Global Climate Change. CRS Issue Brief 89005 by and Fletcher, Susan R. Global Climate Change Treaty: Negotiations and Related Issues. CRS Report for Congress 97-1000ENR.

<sup>44</sup>For further discussion see chapter, The Legislated Peace, in Franck, Thomas M. and Edward Weisband. Foreign Policy by Congress. New York, Oxford University Press, 1979.

In 1974 the Nixon Administration was pursuing a policy of normalizing trade relations with the Soviet Union as part of the broader policy of detente. Against the wishes of the Administration, Congress passed amendments to the Trade Act of 1974 which limited the amount of Export-Import Bank credits to the Soviet Union to \$300 million and made the granting of most-favored-nation treatment conditional upon Soviet adoption of more liberal emigration policies. Subsequently the Soviet Union stated that because of such restrictions it would not put into force the trade agreement which the United States signed in 1972.

In early 1976, when the United States was supplying covert assistance through the Central Intelligence Agency to factions in Angola against an Angolan movement supported by Cuban troops and Soviet military assistance, Congress prohibited any kind of U.S. assistance to Angola unless expressly authorized by Congress.<sup>45</sup> This provision, known as the Clark amendment, forced the Administration to end U.S. aid. Congress repealed the amendment in 1985.

Throughout the Reagan Administration, Congress legislated numerous restrictions and limitations on military assistance to Central American countries. In 1983, for example, it limited the amount that could be spent on U.S. intelligence activities supporting military or paramilitary activities in Nicaragua.<sup>46</sup> In 1987, after the Central American governments signed a peace accord, Congress cut off military assistance to the Nicaraguan Contras (anti-Sandinista guerillas), and in 1988 permitted only non-lethal assistance.<sup>47</sup>

In 1992, Congress prohibited the testing of any nuclear weapon until July 1, 1993, and permitted using funds for nuclear tests after that time only in accord with strict guidelines and conditions, including a plan for achieving a multilateral comprehensive test ban.<sup>48</sup>

In 1993, Congress established a deadline for U.S. troops to leave Somalia. No funds could be used for military action after March 31, 1994, unless the President requested an extension from Congress and received legislative authority.<sup>49</sup>

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<sup>44</sup>(...continued)  
p. 13-33.

<sup>45</sup>See chapter, Teaching the President a Lesson: Angola. In Franck, Thomas M., and Edward Weisband. Foreign Policy by Congress. New York, Oxford University Press, 1979. p. 46-57.

<sup>46</sup>See chapter, Congress and the Central American-Caribbean Region, in Congress and Foreign Policy, 1983.

<sup>47</sup>See Congress and Policy Toward Central American and Panama, by Taft-Morales, Maureen and (name redacted), in Congress and Foreign Policy, 1988, p. 51-87.

<sup>48</sup>Section 507, Energy and Water Development Appropriations Act, 1993, P.L. 102-377, signed October 2, 1992.

<sup>49</sup>107 Stat. 1476, sec. 8151(b)(2)(B) (1993).

On March 12, 1996, President Clinton signed into law, H.R. 927, the Cuban Liberty and Democracy Solidarity Act (P.L. 104-114), often referred to as the Helms-Burton Act. This legislation, among other things, codifies all existing Cuban embargo Executive orders and regulations. This law does not provide for a Presidential waiver of any of these codified embargo provisions. The legislation also allows U.S. nationals to sue for money damages in U.S. Federal Court those persons that traffic in property confiscated in Cuba. The President can waive this provision for six month periods of time. The legislation further denies admission to the U.S. of aliens involved in the confiscation of U.S. property in Cuba or in the trafficking of confiscated U.S. property in Cuba. The Helms-Burton legislation has a direct and important effect on U.S. Cuban policy and was strongly opposed by the Clinton Administration prior to its enactment.<sup>50</sup>

In 1996, Congress passed H.R. 3107, legislation that would impose U.S. sanctions on foreign companies that invested in energy production in Libya or Iran, or sold certain products to Libya. The legislation, the Iran and Libya Sanctions Act of 1996, was signed into law by President Clinton on August 5, 1996 (P.L. 104-172).<sup>51</sup>

## **Informal Advice**

Often Members of Congress shape foreign policy by providing advice to the executive branch in informal contacts. Such advice can also be given at meetings between the President and Members where no formal decision-making is contemplated, but where general reactions to prospective policy initiatives may be solicited by the President.

An example is President Eisenhower's decision not to intervene militarily in Indochina in 1954. At a meeting on April 3, 1954, Secretary of State Dulles and other executive branch officials met with congressional leaders including Senate Majority Leader William Knowland, Minority Leader Lyndon Johnson, Speaker Joseph Martin, Jr. and Minority Whip John McCormack. Secretary Dulles said a unanimous congressional opinion developed in the meeting that there should be no congressional action on a resolution to support involvement until commitments for support were obtained from other nations. Without assurance of either congressional or allied support, President Eisenhower decided against intervention.<sup>52</sup>

Another example is the proposal for U.S.-Soviet nuclear risk reduction centers. The idea had been advanced by Senators Henry Jackson, John Warner, and Sam Nunn in 1980, and Congress had endorsed the concept in the 1985 defense authorization

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<sup>50</sup>For background see: Sullivan, Mark P. Cuba: Issues for Congress. CRS Issue Brief 94005 and Congressional Quarterly Almanac 1996, pp. 9-6, 9-7 and 9-8.

<sup>51</sup>For background see: Katzman, Kenneth. Iran: Current Developments and U.S. Policy. CRS Issue Brief 93033 and Congressional Quarterly Almanac 1996 pp. 9-5 and 9-6.

<sup>52</sup>For further discussion see: Gibbons, William. The Government and the Vietnam War, Executive and Legislative Roles and Relationships, Part I, 1945-1961. Senate Print 95-185 Pt. 1. Washington, G.P.O., 1984. p. 175-227.

act. Senators Warner and Nunn apparently persuaded President Reagan to bring up the idea at the summit conference of 1985 with Soviet Secretary General Gorbachev, and the two leaders agreed to negotiations on the subject. An agreement on nuclear risk reduction centers was signed September 15, 1987.

Congressional letters helped bring about a change in U.S. policy toward Cambodia. 162 House Members and 26 Senators wrote Secretary of State Baker a letter on November 29, 1989, questioning administration policy on Cambodia. On July 24, 1990, 66 Senators wrote President Bush taking issue with past U.S. support for representatives of three resistance groups including the Khmer Rouge to be the legitimate representative of Cambodia in the United Nations. Congressional critics also contended that the administration was placing too much emphasis on the need for compromise by the Vietnamese and the State of Cambodia, and not enough on restricting the Khmer Rouge. As a result of congressional pressure, administration officials stressed more their opposition to the Khmer Rouge, and the aid program was changed from a covert to an overt one which could be more openly debated.<sup>53</sup>

## **Oversight of Policy**

Congress shapes foreign policy through regular oversight of executive branch implementation of foreign policy. This involves such mechanisms as hearings and investigations. In particular, hearings on annual authorizations and appropriations of funds for executive branch agencies carrying out foreign policy provide an opportunity for committee members to question and influence activities and policies. The Senate Foreign Relations and House International Relations Committees oversee the Department of State and other foreign affairs agencies; the Armed Services Committees oversee the Defense Department; the Intelligence Committees oversee the Central Intelligence Agency, and other parts of the intelligence community.

Hearings and investigations may be on any subject within a committee's jurisdiction and raise questions about policy for public discussion. Senate Foreign Relations Committee hearings on the Vietnam War and national commitments in the late 1960s and early 1970s, for example, contributed to public opinion against continued U.S. participation in the war. In 1987 special House and Senate committees investigated revelations that staff of the National Security Council had entered secret negotiations that linked the sale of U.S. arms to Iran with the release of American hostages, and that part of the proceeds from the sale had been used to assist the Nicaraguan rebels known as "Contras."<sup>54</sup>

Other frequently used oversight mechanisms are reporting requirements and requirements that certain decisions or international agreements be submitted to Congress in advance of the date they would be effective. The Freedom Support Act of 1992, for example, required several annual reports, including one on the effectiveness of the assistance provided to each of the independent states of the

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<sup>53</sup>See Support for Third World Resistance Movements: Changing Priorities, by Copson, Raymond W. and (name redacted), in Congress and Foreign Policy, 1990, p. 77-107.

<sup>54</sup>See Congress and the Iran-Contra Affair, by Woldman, Joel M. in Congress and Foreign Policy, 1987, p. 15-33.



former Soviet Union, an analysis of programs to assist U.S. companies in transacting business with the independent states, and the activities of the Democracy Corps. It required semiannual reports on Soviet weapons destruction and numerous one-time reports. It also required reports of proposed obligations of funds for nonproliferation activities in advance of actual obligation, and a certification that a state was meeting certain criteria, such as forgoing excessive military modernization, prior to obligating funds for nonproliferation and disarmament programs.<sup>55</sup>

Since the early 1970s, Congress has used oversight mechanisms to advance human rights as an important factor in U.S. foreign policy. The House International Relations and Senate Foreign Relations Committees have held hearings on human rights in various geographic regions and specific countries, and cases involving violations of human rights of individuals in foreign countries. In 1975, Congress established machinery in the State Department to carry out the human rights policy and required annual reports from the Department on human rights observance by each recipient of U.S. foreign aid. In 1979 it required that the report cover all members of the United Nations. Congress has monitored the reports and executive branch policies toward countries with poor human rights records, frequently inserting in legislation conditions or restrictions aimed at improving human rights policies. The foreign operations appropriation act for FY1993, for example, prohibited aid to Zaire because of continued reports of human rights abuses in that country.<sup>56</sup>

In the mid-1990s, the Indonesian government's use of military force to deal with internal political dissension in East Timor, a province it took over by force from Portugal in the mid-1970s, led to criticism in the Congress of Indonesia's human rights practices. This led to inclusion of a restriction in the Foreign Operations Appropriation Act for FY1995 (P.L. 103-306, signed August 23, 1994) against the sale or licensing of "small or light arms and crowd control items" by the U.S. for Indonesia, pending a report to the Appropriations Committees of Congress by the Secretary of State that there had been significant progress made on human rights practices in East Timor and elsewhere in Indonesia. Funding for grant military assistance training of the Indonesian military was also denied in this legislation. The restriction on funding for participation in grant military funding for the Indonesian military has also been placed in recent appropriations acts.<sup>57</sup>

## Conclusion

The practices illustrated in this report show that making U.S. foreign policy is a complex process. Both the legislative and executive branches play important roles; the roles are different, although frequently overlapping. Both branches have

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<sup>55</sup>P.L. 102-511, signed October 24, 1992.

<sup>56</sup>P.L. 102-391, signed October 5, 1992. See House Committee on Appropriations Report 102-108, June 12, 1991, p. 39.

<sup>57</sup>Foreign Operations, Export Financing and Related Appropriations Act, FY1998 (P.L. 105-118, November 26, 1997. Omnibus Consolidated and Emergency Supplemental Appropriations Act, FY1999. (P.L. 105-277, October 21, 1998).

continuing opportunities to initiate and change foreign policy, and the interaction between them continues indefinitely throughout the life of a policy.

The President as the chief spokesman of the Nation, directs Government officials and machinery in the daily conduct of diplomacy, and has the principal responsibility for taking action to advance U.S. foreign policy interests. Congress in its oversight responsibility can affect the course of policy through enactment of legislation governing foreign relations and through the appropriation or denial of funds. Experience has shown that cooperation between the two branches is necessary for a strong and effective U.S. foreign policy.

## **Appendix: Division of Foreign Policy Powers between the President and Congress**

### **Excerpts from the Constitution**

*ARTICLE I. Section 7.* All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills....

*Section 8.* The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defense....

To regulate Commerce with foreign Nations...

To establish an uniform Rule of Naturalization...

To coin Money, regulate the Value thereof, and of foreign Coin...

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, ....To provide and maintain a Navy;...

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions;....

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof....

*Section 9.* No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law;....

*ARTICLE II. Section 1.* The executive Power shall be vested in a President of the United States....

*Section 2.* The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;....

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors,

other public Ministers and Consuls,....and all other Officers of the United States, whose Appointments are not herein otherwise provided for....

*Section 3.* ...he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States. ....

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