APPENDICES

commission on the ORGANIZATION of the government FOR the conduct of FOREIGN POLICY

June, 1975

(IN SEVEN VOLUMES)

[volume V]

Appendices

VOLUME I:
Appendix A: Foreign Policy for the Future
Appendix B: The Management of Global Issues
Appendix C: Multilateral Diplomacy

VOLUME II:
Appendix D: The Use of Information
Appendix E: Field Reporting
Appendix F: Policy Planning
Appendix G: Analytic Techniques for Foreign Affairs

VOLUME III:
Appendix H: Case Studies on U.S. Foreign Economic Policy: 1965–1974
Appendix I: Conduct of Routine Relations
Appendix J: Foreign Economic Policy

VOLUME IV:
Appendix K: Adequacy of Current Organization: Defense and Arms Control

VOLUME V:
Appendix L: Congress and Executive-Legislative Relations
Appendix M: Congressional Survey
Appendix N: Congress and National Security

VOLUME VI:
Appendix O: Making Organizational Change Effective: Case Studies
Appendix P: Personnel for Foreign Affairs
Appendix Q: Posts and Missions
Appendix R: Comparative Foreign Practices
Appendix S: Advisory Panels
Appendix T: Budgeting and Foreign Affairs Coordination

VOLUME VII:
Appendix U: Intelligence Functions Analyses
Appendix V: Coordination in Complex Settings
Appendix W: Ethical Consideration in Foreign Policy
Appendix X: Three Introductory Research Guidelines

1642

VOLUME V

	Page
APPENDIX L: Congress and Executive-Legislative Relations	1
APPENDIX M: Congressional Survey	117
APPENDIX N: Congress and National Security	203

1643

Foreword

The Commission on the Organization of the Government for the Conduct of Foreign Policy has benefited greatly from the studies and analytic papers submitted to it by scholars and experts in various fields. Many of these contributions are published in this and companion volumes as appendices to the Commission Report. They are offered to the public in the hope of stimulating further discussion and analysis of the difficult issues of government organization to meet new needs. The views expressed, however, are the authors' own; they should not be construed to reflect the views of the Commission or of any agency of the government, Executive or Congressional. The views of the Commission itself are contained solely in its own Report.

1644

Appendix L: Congress and Executive-Legislative Relations

1645

Introduction

Appendix L contains a wide selection of testimony before the Commission on the subject of "Congress and Executive-Legislative Relations." The first paper, testimony of a panel discussing the duties of the Congress and of the President within the constitutional framework, was printed in the *University of Virginia Law Review.* The papers at the end of the Appendix complement the constitutional debate with a panel discussion of enduring issues—among them, the war powers, secrecy in government, and executive privilege.

Senator J. W. Fulbright's paper focuses on the treaty process (which Professor John F. Murphy also analyzes).

Representative Richard Bolling and Professor Arthur Schlesinger discuss the influence of organization on the conduct of foreign policy within the legislative and executive branches. Senator Mike Mansfield, a Commission member, and Professor Randall Ripley give contrasting views on Congressional leadership. And Senator James Pearson, also a member of the Commission, discusses the obstacles facing Congress in the conduct of international economic policy.

Additional material on these subjects is to be found in Appendices M and N.

Contents

Introduction 3

ORGANIZING THE GOVERNMENT TO CONDUCT FOREIGN POLICY: THE CONSTITUTIONAL QUESTIONS 7
by Louis Henkin, et al.

Introduction by William B. Spong, Jr. 7

I. "A More Effective System" for Foreign Relations: The Constitutional Framework, by *Louis Henkin* 9
1. The Constitutional Blueprint 9
2. Constitutional Uncertainties and Systemic Ineffectiveness 13
3. The Quest for Remedies 17
4. Conclusion 20

II. Responses 22
1. Remarks by Gerhard Casper 22
2. Remarks by Thomas Ehrlich 26
3. Remarks by Richard A. Falk 29
4. Remarks by Eugene V. Rostow 32

FOREIGN POLICY ASPECTS OF THE HOUSE SELECT COMMISSION ON COMMISSIONS . 37
by Representative Richard Bolling

THE ROLE OF THE PRESIDENT IN FOREIGN POLICY 40
by Arthur Schlesinger, Jr.

CONGRESSIONAL LEADERSHIP AND FOREIGN POLICY 44
by Senator Mike Mansfield

CONGRESSIONAL PARTY LEADERSHIP AND THE IMPACT OF CONGRESS ON FOREIGN POLICY 47
by Randall B. Ripley

I. Goals for Congress in the Foreign Policy Arena 47

II. Some General Prescriptions 47

III. The Place of Congressional Party Leadership in Promoting Congressional Impact of Foreign Policy 48

FOREIGN ECONOMIC POLICYMAKING 56
by James B. Pearson

CONGRESS AND FOREIGN POLICY 58
by Senator J.W. Fulbright

I. The Decline of Congress 58

II. National Commitments 60

1647

PUBLIC PARTICIPATION IN THE FOREIGN POLICY PROCESS 66
by Richard A. Frank

I. Who is the Public? 66

II. The Nature of Participation 67

III. The Foreign Policy Process 68

IV. The Balance That Must Be Weighed 68

V. Ways to Increase Public Involvement 69

VI. Conclusion 74

FOREIGN POLICY INFORMATION 75
by Stanley N. Futterman

EXECUTIVE PRIVILEGE IN THE CONDUCT OF FOREIGN POLICY 78
by Rita A. Hauser

THE POWER TO MAKE WAR 80
by W. Taylor Reveley III

I. Background 80

II. Issues 81

III. Discussion and Recommendation 82
Constitutional Guidelines for the War-Power Allocation 82
Definition of the Allocational Ends 82
Respective Institutional Capabilities of the President and Congress to Realize the Allocational Ends 87
Presidential-Congressional Prerogatives Over American Involvement in Combat 89
War-Power Legislation 92

TREATIES AND INTERNATIONAL AGREEMENTS OTHER THAN TREATIES: CONSTITUTIONAL ALLOCATION OF POWER AND RESPONSIBILITY AMONG THE PRESIDENT, THE HOUSE OF REPRESENTATIVES, AND THE SENATE 99
by John F. Murphy

I. Brief Background 101

II. Executive Agreements: Constitutional Prerogative or Usurpation? 105

III. Treaties or Congressional-Executive Agreements: A Choice Dictated by the Constitution or by Policy Considerations? 108

IV. Treaties and International Agreements Other Than Treaties: An Appraisal of the Present and Proposals for Future Action 110

1648

Organizing the Government to Conduct Foreign Policy: The Constitutional Questions

William B. Spong, Jr.*

INTRODUCTION

In 1972 Congress established a Commission on the Organization of the Government for the Conduct of Foreign Policy as part of its foreign relations appropriation for fiscal year 1973.[1] Congress has authorized several previous foreign policy studies oriented to foreign policy organization,[2] but the mandate of this Commission was much broader than that of past undertakings. Its terms have directed the Commission to "study and investigate the organization, methods of operation, and powers of all departments, agencies, independent establishments, and instrumentalities of the United States Government participating in the formulation and implementation of United States foreign policy. . . ." [3]

Due to delay in the appointment of its members, the Commission was not organized formally until April 1973. The President, the Senate, and the House of Representatives [4] each selected four of the 12 members. The original Commission was thus comprised of the following participants:

Anne L. Armstrong, Presidential Counsellor [5]
William J. Casey, Under Secretary of State for Economic Affairs [6]
Dr. David Abshire
Robert D. Murphy
Mike Mansfield, Majority Leader, United States Senate
James B. Pearson, member, Senate Committee on Foreign Relations
Mrs. Charles W. Engelhard, Jr.
Frank C. P. McGlinn
William S. Mailliard, member, House Committee on Foreign Affairs [7]
Clement J. Zablocki, member, House Committee on Foreign Affairs
Dr. Arend D. Lubbers
Dr. Stanley P. Wagner

The Commission then elected Ambassador Murphy, diplomatic trouble-shooter for Presidents Roosevelt, Truman, and Eisenhower, as its Chairman and Senator Pearson as Vice Chairman.[8]

Charged with submitting a comprehensive report to both the President and Congress not later than

*General Counsel, Commission on the Organization of the Government for the Conduct of Foreign Policy; Cutler Lecturer, Marshall-Wythe School of Law, College of William and Mary; LL.B., 1947, University of Virginia. The author served as United States Senator from Virginia from 1967 to 1973.

[1]Foreign Relations Authorization Act of 1972 § 603(a), Pub. L. No. 92-352, 86 Stat. 489, 497.

[2]There have been more than 80 major studies of one aspect or another of foreign affairs organization in the three decades since World War II. Among the most prominent government studies have been the first Hoover Commission of 1949, the Wriston Committee of 1954, the Heineman Task Force of 1967, and the State Department's "Diplomacy for the Seventies" program. Notable private studies include those contracted to the Brookings Institution in 1951 and 1959, the Herter Committee of 1962, and the American Foreign Service Association's "Toward a Modern Diplomacy" of 1968.

[3]Foreign Relations Authorization Act of 1972 § 603(a), Pub. L. No. 92-352, 86 Stat. 489, 497.

[4]The Act required that each of the three groups appoint half its delegation from outside the government. Furthermore, the congressional participants from both House and Senate were divided between the two major political parties. *Id.* § 602(a).

[5]Mrs. Armstrong resigned from the Commission with her resignation as Counsellor to the President. President Ford has appointed Vice President Nelson A. Rockefeller in her place.

[6]Mr. Casey has since been appointed President of the Export-Import Bank of the United States, and continues to serve on the Commission as a representative of the Executive Branch in that capacity.

[7]Representative Mailliard resigned from Congress to become Ambassador to the Organization of American States. Speaker Albert appointed Representative Peter H. B. Frelinghuysen in his place. Congressman Frelinghuysen's service on the Commission expired at the end of his term as a member of the 93d Congress. Speaker Albert has appointed Representative William Broomfield of Michigan as his successor.

[8]Senior staff members of the Commission are Dr. Francis O. Wilcox, executive director; Fisher Howe, deputy executive director; William B. Spong, Jr., general counsel; and Peter L. Szanton, research director.

PREVIOUS PAGE BLANK

1649

June 30, 1975, the Commission has been encouraged to recommend such "proposed constitutional amendments, legislation, and administrative actions [it] considers appropriate in carrying out its duties." [9] The enabling legislation has specifically requested recommendations along the following lines:

(1) the reorganization of the departments, agencies, independent establishments, and instrumentalities of the executive branch participating in foreign policy matters;

(2) more effective arrangements between the executive branch and Congress, which will better enable each to carry out its constitutional responsibilities;

(3) improved procedures among departments, agencies, independent establishments, and instrumentalities of the United States Government to provide improved coordination and control with respect to the conduct of foreign policy;

(4) the abolition of services, activities, and functions not necessary to the efficient conduct of foreign policy; and

(5) other measures to promote peace, economy, efficiency, and improved administration of foreign policy.[10]

The Commission sought testimony from the legal community to recommend arrangements which would better enable the President and Congress to carry out their constitutional responsibilities.[11] To examine these particular issues, including the advisability of constitutional amendments, the Commission's counsel turned to Professor Louis Henkin, Hamilton Fish Professor of Law at Columbia University and author of *Foreign Affairs and the Constitution.*[12] Professor Henkin was asked to prepare a paper for presentation to the Commission on the foreign policy aspects of the Constitution, their law and history, and the particular constitutional responsibilities of Congress and the President. The Commission also requested his suggestions for developing a more effective system of conducting our foreign policy. The Commission then invited four panelists to comment upon Professor Henkin's paper and to advance independent views: Dr. Gerhard Casper, Professor of Law and Political Science, University of Chicago; Dean Thomas Ehrlich, Stanford University Law School; Dr. Richard A. Falk, Milbank Professor of International Law and Practice, Center of International Studies, Princeton University; and Dr. Eugene V. Rostow, Sterling Professor of Law and Public Affairs, Yale Law School.[13]

What follows is Professor Henkin's paper, edited slightly from transcripts with his approval to reflect the flavor of his oral presentation to the Commission. There are also edited versions of the panelists' responses to Professor Henkin's views and suggestions, approved by each. The editors have supplied footnote references for the benefit of the readers, also approved by Professor Henkin and the panelists.

This nation's long, agonizing involvement in Southeast Asia, followed by the trauma of Watergate, has provoked penetrating doubts about our constitutional system. These events created a divisiveness unparalleled since the Civil War and prompted a reexamination of the modern usage of the war, treaty, and emergency powers; executive privilege; presidential agencies; and legislative advice and consent. Yet with an awareness of our recent turmoil, it is significant that these distinguished authorities have not, except for one suggestion,[14] counseled surgery at the constitutional level to cure the alleged ills of presidential usurpation or congressional abdication of power and responsibility.

The chaos and discord of the past few years call for the development of a more effective system to conduct foreign affairs, particularly for an improvement of the relationship between the President and Congress. In the following pages the five scholars suggest several remedies, but they are remedies of the spirit, of process and by statute—not by fundamental change in the laconic and quite remarkable framework drafted by the Founding Fathers. The testimony presented hereinafter underscores the oft-quoted wisdom of a perceptive Englishman, William Gladstone, who wrote nearly 100 years ago:

> . . . the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man. . . . its exemption from formal change, though not entire, has certainly proved the sagacity of the constructors, and the stubborn strength of the fabric.[15]

---

[9] Foreign Relations Authorization Act of 1972 § 603(b), Pub. L. No. 92-352, 86 Stat. 489, 497.

[10] *Id.* § 603(a), 86 Stat. at 498.

[11] *See id.* § 603(a) (2).

[12] L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION (1972).

[13] The five professors are among 197 witnesses who have testified on legal and other aspects of our foreign policy structure during the Commission's two-year study. The Commission has held meetings in Washington, D.C., and four public hearings in Philadelphia, Atlanta, Chicago, and San Francisco.

[14] I refer to Professor Casper's suggestion that the House of Representatives be given a greater role in the treaty process, given the fact that the Senate is now popularly elected and not chosen by state legislatures.

[15] Gladstone, *Kin Beyond Sea*, 127 N. AM. REV. 174, 185-86 (1878).

1650

"A More Effective System" for Foreign Relations: The Constitutional Framework*

Louis Henkin†

This is essentially a background essay on the Constitution, its law and its history, as they relate to the concerns of the Commission. The Commission has the task of studying and submitting "findings and recommendations to provide a more effective system for the formulation and implementation of the Nation's foreign policy." [1] The system we have is, of course, rooted in the Constitution. That there may be need for a more effective system was suggested to many by our misfortunes in Indochina, and the impassioned debates, scattering blame for our failures there, swirled about the Constitution: while some cried presidential usurpation, and others congressional abdication, most seemed agreed that the constitutional blueprint for making our foreign policy and conducting our foreign relations was somehow at fault. Suggested remedies have included various amendments to the Constitution. This Commission will have to look beyond the Constitution, but surely it must begin there.

The Constitution does not speak of "foreign policy," nor of making or implementing foreign policy. It is not apparent that the Framers thought in those terms. They did assign particular powers and responsibilities relating to intercourse with other nations to different branches of the federal government, and they foreclosed foreign intercourse to the states. Looking at the Constitution through our own lenses, we are free to characterize the constitutional distribution as a "system" for formulating and implementing foreign policy, but we should not be surprised if what we see in the Constitution does not conform nicely to contemporary notions.

In particular, the Constitution does not reflect, or lend itself to, sharp distinctions between "formulating" and "implementing" foreign policy. Pursuant to the constitutional allocations of power and responsibility, some foreign policy is made by Congress, some by the President, and some by the President-and-Senate. Both the President and Congress also implement foreign policy. (To some extent, even, the courts and the states also formulate as well as implement foreign policy.) Foreign policy is also inherently made in the course and by the manner of implementing it.

I. The Constitutional Blueprint

The provisions in the Constitution which explicitly allocate authority and responsibility in foreign affairs are few. Essentially, Congress is given power to regulate commerce with foreign nations, and to decide for war or peace.[2] (While Congress has the power also to define piracy and offenses against the law of nations,[3] its exercise has not loomed large in our national history.) The President has the power to make treaties and to appoint ambassadors, each with the advice and consent of the Senate; [4] he also receives ambassadors.[5]

There are other enumerated powers, of general applicability, which have important uses for foreign affairs. Congress has the power to tax and spend for the common defense and for the general welfare.[6] It can raise and support an army and a navy.[7] It can establish and regulate executive offices.[8] It can leg-

*Statement before the Commission on the Organization of the Government for the Conduct of Foreign Policy, May 20, 1974. The text has been edited and footnotes added.

†Hamilton Fish Professor of International Law and Diplomacy and Professor of Constitutional Law, Columbia University. A.B., 1937, Yeshiva College; LL.B., 1940, Harvard University.

[1] Foreign Relations Authorization Act of 1972 § 603 (a), Pub. L. No. 92-352, 86 Stat. 489, 497-98 (1972).

[2] U.S. CONST. art. I, § 8.

[3] *Id.*

[4] *Id.* art. II, § 2.

[5] *Id.* § 3.

[6] *Id.* art. I, § 8.

[7] *Id.*

[8] This power of Congress is contained in the grant to the President of authority to appoint officers "whose Appointments are not herein otherwise provided for, and *which shall be estab-*

1651

islate, and appropriate funds, as is necessary and proper to carry out its various powers and those of the other branches of government.[9] The President's authority to appoint officers (with advice and consent of the Senate, or alone upon authorization from Congress),[10] his responsibility to see that the laws are faithfully executed,[11] and his command of the armed forces,[12] are as relevant for foreign as for domestic affairs.

The enumerated powers were obviously important to the Founding Fathers; they are important today and, contrary to common impression, they remain essentially unchanged and raise few legal issues. The uncertainties and the sources of controversy about the constitutional blueprint lie in what the Constitution does not say. For the enumerated powers relating to foreign affairs, even as supplemented by the powers of general applicability, seem spare, sparse, leaving much unsaid. The power to make treaties is allocated to the President-and-Senate,[13] but who has authority to terminate treaties? Congress has the power to declare war,[14] but who can make peace? More importantly, who formulates that foreign policy which is neither a regulation of commerce nor a declaration of war, and is not embodied in a treaty? Indeed, who formulates general principles of policy of which commerce, and war-or-peace, and treaties may be particular expressions? Finally, who controls, supervises, regulates the conduct of our relations with other nations?

These lacunae have moved some of us to speculate whether our Founding Fathers had a limited conception of foreign affairs; or, even, whether they had a conception of the Constitution different from ours—selective rather than complete, immediate rather than eternal, a suggestive guide for reasonable men in their time rather than a succinct legal document for fine, textual argument by lawyers and judges for centuries. Whatever the reason for constitutional inarticulation, no one has doubted that the United States has the missing powers cited and all other powers possessed by other sovereign nations, and that these powers are in the federal government. What has been uncertain is which branch has the constitutional authority to act for the United States.

There is a basis for arguing that the Constitutional Fathers intended the President to be the agent and executor of congressional policy in foreign as in domestic affairs. Some have suggested, alternatively, with a nod to the Supreme Court's opinion in the *Steel Seizure Case*,[15] that the unarticulated foreign relations powers of the United States should be divided "naturally," with those inherently "executive" allocated to the President and those "legislative" in character, to Congress. But is formulating national foreign policy, other than that contained or reflected in statutes, "legislative" or "executive"? Alexander Hamilton early launched the argument that when the Constitution vested in the President "the Executive Power" (not only, as for Congress, the powers "herein granted") it included much more than the responsibility of executing congressional policy;[16] it gave him also a different, independent authority known to the Framers, by way of Montesquieu and Locke, as "executive power," that is, full powers in foreign relations, except as the Constitution expressly provided otherwise.[17] That view has not been authoritatively accepted by the courts, but neither has it been rejected. For the rest, lawyers have sought to locate the "missing" pieces of our "system" by construing and interpreting, by interpolating in and extrapolating from, what is expressly provided; but they have not achieved any notable consensus.

While constitutional exegesis has not been irrelevant, argument and authority are available for at least two possible principles of distribution of authority, and interpretation has not determined the shape of the constitutional "system"—not, in particular, the respective authority of President and Congress. What has shaped the system primarily have been the character and needs of foreign relations, responding to the respective constitutional and political power of Presidents and Congresses in our system generally and the respective influence of particular Presidents and Congresses at several times in our history.

In addition to its enumerated powers and their implications, Congress has achieved an unenumerated power to make laws in matters implied in "sovereignty" and "nationhood," such as immigration, nationality, rights of aliens, and diplomatic protection.[18] But domestic legislation apart, power to act where the Constitution is silent began to flow to the President from the beginning. For Hamilton this was what the Constitution intended;[19] intended or not, it was perhaps the inevitable consequence of other constitutional dispositions.

The reasons why the President early acquired

lished by Law" (emphasis added). *Id.* art. II, § 2.

[9] *Id.* art. I, § 8. On the power to appropriate funds "by Law," see *id.* § 9.

[10] *Id.* art. II, § 2.

[11] *Id.* § 3.

[12] *Id.* § 2.

[13] *Id.*

[14] *Id.* art. I, § 8.

[15] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[16] In his famous "Pacificus" letter supporting Washington's power to proclaim neutrality. 7 A. HAMILTON, WORKS 76, 81 (Hamilton ed. 1851).

[17] *Id.*

[18] *See, e.g.*, The Chinese Exclusion Case, 130 U.S. 581 (1889). *See generally* Henkin, *The Treaty Makers and the Law Makers: The Law of the Land and Foreign Relations*, 107 U.PA. L. REV. 903 (1959).

[19] 7 A. HAMILTON, *supra* note 16, at 76, 81.

1652

dominant influence in foreign policy are relevant to understanding our present system and to any recommendations for improving it. From the beginning the President represented the United States to the world. He was the sole organ of communication with other governments and had exclusive control of the channels and processes of communication, usually discreet, often secret. The President had charge of daily relations with other nations. Continuous intercourse generated innumerable issues, and someone had to formulate United States policy about them.

The President began to make that policy. Small decisions in daily intercourse inevitably were made "on the spot" by those engaged in the process. Even as to larger issues, the President was always in session; Congress was not, and could be specially convened only with difficulty, especially in our early days. The President had the facts, and the advice of expert subordinates. He could act quickly, decisively; only he could act when Congress was not in session and decision was urgent. George Washington—scrupulous, responsible, non-self-aggrandizing—proclaimed neutrality, asked for the recall of the misbehaving French Minister, fought Indians, launched the Jay Treaty. He, or his cabinet, or his ambassadors, made a myriad of smaller decisions—"formulated national policy"—in conducting relations with other countries every day.

The President's control of the conduct of foreign relations, then, brought with it large powers to formulate foreign policy in various contexts and forms. The President formulates policy when he makes claims on behalf of the United States, or responds to claims or other overtures by foreign governments. The conduct of foreign relations itself inevitably communicates attitudes and intentions which constitute or lead to understandings, commitments, agreements. An Executive Branch responsible for foreign relations could not avoid planning and projecting national attitudes and policies. If some of these might eventually call for a treaty, a statute, a declaration of war, or an appropriation of funds, Congress becomes necessary, but only then. From the Monroe Doctrine and earlier, to the Nixon Doctrine and since, Presidents have developed and announced prospective national policy committing the United States to directions and future actions, and other states have treated these declarations as United States policy. Presidents early began to make even formal executive agreements, written as well as oral, many not unimportant.

As the President established sole control of the conduct of daily foreign relations and achieved policy-making authority in foreign affairs, other presidential functions also assumed a policy-making character. The power to appoint ambassadors (with the consent of the Senate) and the task of receiving foreign ambassadors became authority to recognize (or not recognize) states and governments, and to begin, terminate, or resume relations with them. The power to appoint other officers with the consent of the Senate (or alone, by legislative authorization), and the early practice of appointing special agents for ad hoc assignments without Senate consent, also acquired policy-making purpose and overtones. The President's task of faithfully executing the laws and his responsibility of defending United States interests around the world became authority to use the armed forces under his command, short of war, for these purposes and for implementing treaties, laws, and other national policies (including presidential foreign policy).

Congress contributed to the early and continuing growth of presidential power in foreign affairs, although perhaps it could not have prevented it. Congress early recognized and confirmed the President's control of daily foreign intercourse. It did not organize itself, and equip itself with expertise, so as to acquire a dominant authority in foreign relations, or even a continuous, informed participation. Any constitutional power it might have had to do so soon atrophied. It never even developed a way to follow closely what the President was doing. Nor did it often bestir itself to disown or to dissociate itself from what the President had done, to condemn him for doing it, or even to question his authority to do it. When issues of authority arose, they became enmeshed in partisan dispute. The President's party in Congress generally defended his authority; the opposition's strictures became, or appeared, partisan rather than principled, institutional, constitutional. Even as regards international agreements, as to which the Senate had an explicit constitutional role, the Senate could not complain about executive agreements it did not know of; it did not complain of many it knew of; occasional complaints did not challenge or affect the President's asserted power in principle.

Congressmen sometimes grumbled or even "reserved their positions," but usually acquiesced; rarely did Congress resist formally. Often, informal consultations with congressional leaders before the President declared, or acted on, national policy disarmed congressmen who might have been disposed to constitutional battle and thus helped confirm presidential authority to act without formal congressional participation. Congress further conceded an extended presidential primacy when early it began to delegate to him huge grants of power with only general lines of guidance thus effectively leaving to the Executive the formulation of policy as well as large discretion in carrying it out.[20]

[20] *See* United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

1653

In a word, Congress allowed itself to become removed from the *process* of conducting foreign relations and formulating foreign policy, appearing only late when formal action was constitutionally required and in an independent, almost adversary posture towards the Executive. By then it often did not feel free to refuse to consummate policies which the President had developed for the United States, thus effectively confirming his authority to make them.

In time, the issue became not whether the President had authority to act but what the limits on his authority were; not whether the President could act when Congress was silent, but whether he could act even contrary to the expressed wishes of Congress —whether Congress could direct, control, or supersede his decisions, whether Congress was constitutionally free *not* to implement his policies.

Emphasis on the President's power to formulate foreign policy, with its roots in his control of foreign relations, should not depreciate the part which Congress continues to have in the formulation of foreign policy. Congress formulates major foreign policy by legislation regulating commerce with foreign nations or authorizing international trade agreements.[21] The Foreign Commerce Power has grown enormously on the wings of the Interstate Commerce Power so that Congress now has nearly-unlimited power to regulate anything that is, is in, or affects, either interstate or foreign commerce. Congress, and Congress alone, also has the power to make the national policy to go to war or to stay at peace; it has determined United States neutrality in the wars of others. The War Powers of Congress include the power to legislate and spend as necessary to wage war successfully; to prepare for, deter, or defend against war; and to deal with the consequences of war. Under the "general welfare" clause, Congress can decide where, for what, how much, and on what conditions to spend, as in foreign aid. There are implications for foreign policy when Congress establishes and regulates the Foreign Service and the bureaucracies of various departments and agencies dealing with foreign affairs. The innumerable uses of the "necessary and proper" clause include many that "formulate foreign policy." Since foreign policy and foreign relations require money, which only Congress can appropriate,[22] Congress has some voice in all foreign policy through the appropriations process, although Congress would probably not be constitutionally justified in refusing to support policies which are within the President's power to make. Congress' unenumerated power to legislate on all matters relating to "nationhood" and foreign affairs may reach far beyond regulation of immigration, nationality, and diplomacy. It includes, apparently, the power to join the President in making international agreements by resolution of both houses of Congress as an alternative to the treaty process.[23]

The Senate, in its executive capacity, is indispensable to the formulation of foreign policy by treaty—as, in our day, in the UN Charter, the North Atlantic Treaty, and even common treaties of friendship, commerce and navigation. If the Senate does not often formally refuse consent to treaties, it sometimes achieves that result simply by failing to act on them. Sometimes, too, it gives consent only with important reservations. When the Senate does consent to an important treaty, it is often because its views were anticipated, or informally determined, and taken into account. Occasionally it contributes to national policy by its actions and expressed attitudes on appointments of foreign service officers, cabinet members, and other important officials in the "foreign affairs establishment."

The implementation of policy is, in constitutional terms, more easily described. The President—through the State Department, the Foreign Service, and some other departments and agencies—implements all foreign policy whether made by the President, the President-and-Senate, or the Congress. Congress implements foreign policy by enacting necessary and proper legislation, and by appropriating funds.

I have described the formal constitutional system for formulating foreign policy. "Sub-constitutionally," as everyone knows, "the President" includes a huge bureaucracy in the Department of State, in other departments and agencies, and in more than a hundred missions throughout the world. Congress, too, represents much besides the formal statutes and resolutions it adopts. Formally or informally, congressional committees and individual congressmen contribute to policy in many ways and instances. For my purposes, the sub-constitutional institutions and procedures depend on and derive from the formal constitutional parts of President, Congress, and Senate, and are only the machinery whereby the constitutional roles are played. In fact, the effectiveness of the constitutional system may depend as much or more on the organization and operation within each branch and in relations between branches as on the underlying constitutional blueprint. Improvement in this "subsystem," moreover, is surely easier and possibly more effective than surgery on the basic structure by constitutional amendment.

[21] U.S. CONST. art. I, § 8.

[22] *Id.* § 9, cl. 7.

[23] *See* authorities cited and discussed in L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 173–76 and corresponding notes (1972).

1654

II. Constitutional Uncertainties and Systemic Ineffectiveness

The assignment to this Commission of the task to seek a "more effective system" for formulating and implementing foreign policy may reflect two different motivations suggesting two different tasks. Some in Congress may have believed that the system we have does not conform to the "original understanding," or even to the principles of the Constitution as it has developed, and that there has been usurpation (notably by the President) or abdication (by Congress), or both, which should be rectified. They would have the Commission identify these distortions and recommend the rectifications and means for achieving them. Others, eschewing notions of constitutional distortion or impropriety, may believe that the system we have has not worked as intended, or, in any event, has not worked well. They would urge that the Commission recommend changes, by constitutional amendment if necessary, to make it work better. The Commission may wish to assume both tasks, identifying "distortions" to be rectified as well as proposing changes from the original plan, by constitutional amendment if necessary.

For either task, the Commission will wish to consider constitutional issues that have divided Congresses and Presidents, and scholars too, if only because such controversy is relevant to the effectiveness of the system. Resolving such issues would tend to make the system more effective; continued failure to resolve them will be a source of ineffectiveness which must be taken into account. In addition, the Commission will, of course, wish to consider inefficiencies that have appeared even when President and Congress act clearly within their accepted constitutional powers.

A. Constitutional Issues of Congressional Power

There are few issues as to the powers of Congress to formulate or implement foreign policy. Presidents have not denied congressional authority to legislate trade policy and domestic law relevant to foreign affairs; to decide for war, peace, or neutrality; [24] to spend; to appropriate; [25] or to investigate. And Congress has not recently asserted a power to declare foreign policy generally by resolution,[26] to denounce treaties, to recognize or deny recognition to governments, to control international negotiations or the daily conduct of foreign relations.

Essentially the live issues as to congressional power are of two kinds. Presidents have denied the authority of Congress to exercise its powers in ways that conflict with presidential powers or policies. Congress, they have argued, cannot tell the President—as it seems to have done in the War Powers Resolution [27]—where to deploy or not to deploy forces; or regulate his authority to use them, in circumstances short of war; or govern his discretion as commander-in-chief during war, as in regard to bombing in Cambodia in 1973. Presidents have objected to directions to spend, and to limitations and conditions on spending, that run counter to presidential policies. President Truman, for example, did not wish to lend money to Franco Spain; other Presidents resisted barring foreign aid to countries committed to alien ideology or policy, or imposing conditions on voluntary contributions to the UN.[28] In foreign affairs, as elsewhere, Presidents have also claimed congressional "usurpation" when Congress has used concurrent resolutions and other forms of "legislative veto"—rather than formal legislation which would be subject to presidential veto—to terminate authority delegated to the President, or to scrutinize and regulate his execution of that authority.

Presidents have also asserted, and congressmen have denied, the obligation of Congress to adopt legislation and appropriate funds to implement treaties and other presidential policy. In fact, however, Congress has not failed to implement or appropriate. There might, of course, be differences as to the nature of the implementation required, especially as to the amount of money required. And Congress might refuse to implement where it denies the President's authority to formulate the particular policy.

B. Constitutional Issues of Presidential Power

In recent years, there has been sharp debate about presidential authority to use the armed forces of the United States in hostilities without a declaration of war or other authorization by Congress. In large part, these debates have centered on the meaning and purpose of resolutions, such as that following the Tonkin Gulf incident,[29] on presidential credibility and integrity, on congressional gullibility, and on the effectiveness of our foreign policy system. Some differences have also emerged on

[24] As to whether, and to what extent, neutrality remains a viable concept and status in international law, compare Henkin, *Force, Intervention, and Neutrality in Contemporary International Law*, 1963 PROC. AM. SOC. INT'L L. 147, 159 (1963), *with* Deak, *Neutrality Revisited*, in TRANSNATIONAL LAW IN A CHANGING SOCIETY 137 (W. Freidmann, L. Henkin, & O. Lissitzyn eds. 1972).

[25] On the President's assertion of authority to impound funds appropriated by Congress, see note 35 *infra*.

[26] Congress can, however, influence foreign policy by "sense resolutions," committee actions, interventions and statements of individual congressmen, and non-legislative riders.

[27] War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973).

[28] *See* L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 356 n.60 (1972).

[29] Tonkin Gulf Resolution, Pub. L. No. 88-408, 78 Stat. 384 (1964).

1655

constitutional principle. Presidents have insisted, in effect, that they have constitutional authority to deploy the armed forces to implement foreign policy, short of sending them to war. Congressmen, and Congress in the War Powers Resolution,[30] have denied the President's independent authority to deploy the troops where they would or are likely to be engaged "in hostilities"—apparently even "short of war"—except in an emergency created by attack against United States territory or armed forces.

Perhaps the primary issue of principle has been the scope of the President's power to conclude executive agreements on his own authority. No President has claimed authority to dispense with Senate consent in all cases, and few, even in the Senate, would deny the President the power to make any "sole" agreements whatsoever. No one, however, has offered a generally acceptable line distinguishing agreements which the President may make on his own authority from those which constitutionally require Senate consent. Even "importance" is not the touchstone, whether in principle or in practice. The "sole" executive agreement has, for instance, been accepted for important agreements which, from diplomatic necessity or other national interest, should be kept confidential.[31]

The other issues and uncertainties of presidential power in foreign affairs are but instances of such difficulties in presidential-congressional relations generally. In foreign affairs, however, executive privilege [32] and the need for secrecy—even from Congress—are asserted more often and more plausibly. All agree that there is need for some secrecy and that the Executive Branch is entitled to some "privacy." The questions are how much and in what circumstances,[33] and how and by whom these questions shall be determined.[34] Can Congress, for instance, prevent secrecy it considers unnecessary, or non-disclosure that it considers not bona fide?

Impoundment, too, is not solely a foreign affairs issue, though the temptation, and perhaps the justification, for impounding may be greater when Congress insists on spending or appropriating for purposes which are inconsistent with presidential foreign policy. In general, however, I have not been able to find any constitutional basis for the President's alleged power: the responsibility to see that the laws are faithfully executed would not seem to imply authority not to execute them. In domestic matters, at least, I am satisfied that the courts will deny a constitutional right to impound, holding that the President may impound only when, as a matter of statutory interpretation, Congress can be deemed to have permitted it.[35] But there is a stronger—I do not say strong—argument that the President may impound monies appropriated for foreign affairs purposes which the President disapproves.[36]

[30]War Powers Resolution, Pub. L. No. 93–148, 87 Stat. 555 (1973).

[31]*See* L. Henkin, *supra* note 28, at 176–84. A different, unresolved issue is the domestic legal effect of an executive agreement, especially in the face of an earlier inconsistent statute.

[32]In my opinion executive privilege has not been a major obstacle to a fuller congressional role in foreign affairs. Executive privilege has not often been formally asserted in foreign affairs matters. As regards informal withholdings of information relating to foreign affairs, one cannot know, of course, in how many instances the President would have persisted in the claim of privilege if Congress had pressed its demand for the information. But it is my impression that even informal withholdings of foreign affairs information from congressional committees have not seriously hampered Congress in carrying out its constitutional functions. Congress *has* been hampered, I believe, by secrecy in foreign affairs—some necessary, some unnecessary—which has effectively denied information to members of Congress as to others.

[33]In general, Congress may seek from the Executive Branch information, whether it relates to foreign or to domestic affairs, about the execution of congressional laws, as well as information relevant to possible future legislation. As to some information, however, the President may claim executive privilege—for example, because divulgence would violate necessary confidentiality within the Executive Branch. *Cf.* United States v. Nixon, 418 U.S. 683 (1974). As regards other information related to foreign affairs, the President may also claim privilege on a different ground, that under his constitutional authority he has determined that it would be against the national interest to reveal the information. *See id.* Note the dictum in the *Nixon* case that a claim of privilege based on a need to protect military, diplomatic, or sensitive national security secrets would be accorded the utmost judicial deference. *Id.* at 706–07. In constitutional principle, however, I believe Congress might insist on its right to that information (at least on a confidential basis) unless it relates to matters within the President's exclusive constitutional authority. We do not yet know whether the courts would resolve issues between the President and Congress as to claims of executive privilege. *See* Henkin, *Executive Privilege: Mr. Nixon Loses but the Presidency Largely Prevails,* 22 U.C.L.A. L. Rev. 40, 43 (1974).

Whether based on Executive Branch "confidentiality" or on other national interest, the privilege to withhold information belongs to the President. While in operation the privilege runs throughout the executive bureaucracy, it does so only by the President's authority and only to the extent he wills it. Thus, the President can forego the privilege and deny it to his bureaucracy. And Congress can insist that the President himself claim the privilege in any or in every case. *Cf.* New York Times Co. v. United States, 403 U.S. 713, 752–59 (1971) (Harlan J., dissenting).

[34]*Cf.* United States v. Nixon, 418 U.S. 683 (1974).

[35]The Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344, 88 Stat. 297, *codified at* 31 U.S.C.A. §§ 1301 *et seq.* (Supp. 1975), seeks to control presidential impoundment. Recent federal court decisions have found against executive claims in cases involving domestic appropriations, although the Supreme Court has not yet considered constitutional claims of a presidential impoundment power. *See* Train v. City of New York, 43 U.S.L.W. 4209 (U.S. Feb. 18, 1975) (statutory grounds). State Highway Comm. of Missouri v. Volpe, 479 F.2d 1099 (8th Cir. 1973) (statutory grounds); Local 2677 v. Phillips, 358 F. Supp. 60 (D.D.C. 1973) (constitutional grounds). For background, see material cited in L. Henkin, *supra* note 28, at 110–11, 354–56 & nn. 56–60; Note, *Presidential Impoundment: Constitutional Theories and Political Realities,* 61 Geo. L.J. 1295 (1973).

[36]*See* L. Henkin, *supra* note 28, at 111.

1656

C. Systemic "Ineffectiveness"

Diagnosis of deficiencies in the system and prescriptions for a "more effective system" must face the implications of the separation of powers. For our Constitutional Fathers, surely, "effectiveness" was not the sole or principal desideratum. As Mr. Justice Brandeis reminded us, they made separation of powers the animating principle of the Constitution "not to promote efficiency"; the "inevitable friction" resulting from separation, he said, was purposeful, "to preclude the exercise of arbitrary power." [37]

Our system for formulating and implementing foreign policy, then, is inherently and purposefully less "effective" than it might be if foreign policy were made and implemented under a single constitutional authority, say, the President. To some, the need for Senate consent to a treaty or to a presidential appointment makes our system less "effective." To some, including John Quincy Adams, lodging the power to declare war in Congress is an "absurdity." [38] Some may decry especially the system, as we now have it, in which Congress retains authority over commerce, spending, and war-or-peace but the President formulates foreign policy generally. Indeed, one must recognize that the "ineffectiveness" produced by such separation is responsible in substantial measure for modifications or circumventions—for the growth and acceptance of presidential agents, presidential agreements, presidential "war" or hostilities-short-of-war.

I assume that we are concerned here, at least initially, with the effectiveness of our system generally within the framework of the present principles of separation of powers. Even so, we might consider whether powers have been "too-separated" or unwisely separated, whether a particular separation is too costly, or too ineffective, and whether a particular inefficiency can be eliminated without essentially undermining the principle of separation.

D. Fragmentation of Foreign Policy Formulation

The principal "ineffectiveness" of our system, I believe, stems not from controversy or uncertainty about the distribution of constitutional authority, nor even from the basic separation of powers. It is, essentially, that the separation of powers and responsibilities in foreign affairs has not worked as originally intended, and in some respects has not worked well. Although originally the principal authority in foreign policy was probably intended for Congress, the character of international affairs and the growing importance of daily, routine relations have given the President the dominant part, not subject to effective check or balance. The formulation of foreign policy is essentially fragmented, with Congress retaining the constitutional authority which had been expressly given it (commerce, spending, war-and-peace, domestic legislation), and the President formulating other foreign policy (some of it subject to Senate veto). But foreign policy is "seamless" and interdependent. Having different parts of it formulated by different, separate branches is inevitably "ineffective." Some may find the particular division which separates trade and spending and war from other policy particularly ineffective.

Even more, *the President's control of international communication and of the daily conduct of foreign relations has made it difficult, perhaps impossible, for Congress to exercise its constitutional powers and responsibilities effectively, "separately."* This, I believe, is the most difficult challenge for the Commission. The President has become a principal source, initiator, planner, draftsman of legislation, and essentially master of the budget, generally. Surely he has come to dominate the legislative process in matters relating to foreign affairs—in regulation of trade and commerce, in spending for foreign purposes, and in declaring or not declaring war. Foreign policy, today, is even more "indivisible" than is domestic policy, and what Congress does is intimately related to other policies which the President determines and to other activities which the President controls. Often, Congress does not have the information, and some congressmen do not have the understanding, sophistication, and interest, to support independent judgment. Inevitably, then, Congress is compelled to accept the grand design, the general direction, the mood, of presidential foreign policy; to depend on the information supplied by the Executive, which is often incomplete because of real or alleged needs of secrecy; to rely heavily on executive expertise and judgment; and to take on faith executive assertions and assessments of the national interest. Congress could strike out on its own only with an acute awareness of its uncertainties and inadequacies, and the risks to the national interest and its own institutional standing.

What is more, even with the best of will and greatest of scruple on the part of the Executive, Congress, or the Senate in its executive role, often does not consider what it is called upon to do until after the international mills have ground long and fine. By the time Congress considers a trade bill or a provision for arms or foreign aid, or the Senate considers a treaty, negotiations have been held, understandings reached, and commitments made (political if not legal), and Congress is far from free to exercise its independent judgment. The result often is that the hand of Congress is forced, that it

[37] Myers v. United States, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting).

[38] 4 MEMOIRS OF JOHN QUINCY ADAMS 32 (C. F. Adams ed. 1875).

-1451

faces a *fait* virtually *accompli*, and that it can only rubber-stamp or at most nibble away at the periphery of executive proposals.

In our time, there has been a dramatic and searing instance of such a presidential "imposition" on Congress in regard to Indochina. To me, charges of presidential usurpation, even of congressional abdication, are largely beside the mark. Congress did delegate to Presidents virtual *carte blanche*, retaining little control and providing little supervision or guidance. In this respect, one may hope that Congress will be substantially more responsible in the future. The question for this Commission, however, is whether Indochina reflects an essential ineffectiveness in the "system." Was it perhaps a "natural" consequence of dividing the power of conducting foreign relations and formulating and implementing much foreign policy, sometimes by use of force, from the power to decide for war? For the line between war and lesser uses of force is often illusive, sometimes illusory. Even when he does not use force, moreover, the President can incite other nations, or otherwise plunge, or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. And once we are at war, congressional control —which in my view Congress continues to have— becomes largely hypothetical. In Indochina, Congress had constitutional authority, by resolution or through the appropriation process, to terminate, confine or otherwise limit our participation. But a large majority of Congress felt it could not break with the President without jeopardizing the lives of American troops and other major national interests. In a word, the constitutional restraints on the President existed but were not effective.

Fragmentation of the power to formulate foreign policy is sometimes inefficient because there is a failure of cooperation between branches, or friction or "slippage" between them. Consider the making of international agreements. The treaty-making process has become far less troublesome than it was during the period culminating in the trauma of the Treaty of Versailles. Although we have not returned, and could not return, to the original conception of the Senate as an advisory council participating in treaty-making at all stages, we have come some way towards that conception by subconstitutional devices. Individual senators sometimes participate in treaty negotiations and leaders or key committee members are consulted informally, so that Senate attitudes can be better anticipated. This process is less effective as regards multilateral treaties where the United States often participates in negotiation without a clear intention of ultimately adhering to the treaty.[39] And for some such treaties, and some "undramatic" bilateral treaties, it is not always possible to obtain a "reading" of probable Senate attitudes. The principal ineffectiveness in regard to international agreements derives from the fact that the President alone decides which agreements should have Senate consent and that this decision is made essentially without Senate participation, without standards, without review.

The process for appointing ambassadors and other officials who participate in formulating or implementing foreign policy has, on the other hand, not produced substantial uncertainties or much dissatisfaction. Perhaps the chief "ineffectiveness" here is that the Senate has been virtually a "rubber-stamp," with an occasional "rebellion" largely fortuitous and capricious. There are no known meaningful qualifications for appointment nor criteria for Senate approval or disapproval. If meaningful Senate consent is deemed important, our system does not have it.

There is, also, a recurrent "inefficiency" from the accepted view that Congress may constitutionally exercise its powers in disregard of treaties or other international obligations.[40] A recent example was the Byrd Amendment dishonoring the UN embargo on Rhodesian chrome.[41] Presidents have also found burdensome, and interfering, congressional control over the executive foreign affairs bureaucracy. Even were he to grant the constitutional validity of the legislative veto, a President would doubtless deem it an unnecessary and ineffective means for terminating authority delegated to him. Though neither Presidents nor Congresses are likely to object, others may see an unnecessary "ineffectiveness" in extravagant congressional delegations to the President.

There is, finally, doubtless purposeful slippage and friction in that separation of powers requires the President to go to Congress for appropriations and legislation to implement his policies. Even if I am correct in my view that Congress is constitutionally obliged to implement what the President is constitutionally entitled to formulate, the system now enables Congress to challenge the President's assertions of authority and to scrutinize his claims of necessary implementation. The President may have

[39]Pressure on the Senate to consent is reduced where United States participation in drafting the treaty does not necessarily imply an intention to ratify it, and no other state is entitled to expect ratification by the United States. *See, e.g.*, the Genocide Treaty, which has languished before the Senate since 1949. Convention on the Prevention and Punishment of the Crime of Genocide, *approved*, Dec. 9, 1948, 78 U.N.T.S. (1951).

[40]And the courts will give effect to the statute because it came later. The classic case is Whitney v. Robertson, 124 U.S. 190 (1888). The counterpart, that a treaty should be applied in the face of an earlier inconsistent statute, may also be inefficient but is less troubling for foreign relations.

[41]Military Procurement Act of 1971 § 503, 50 U.S.C. § 98 (Supp. 1972).

1658

a legitimate objection to being subjected to the maddening inefficiency of a two-tier authorization and appropriation process and to the occasional abuse of that process for scrutiny and even harassment of officials in regard to matters not relevant to the subject at hand.

III. The Quest for Remedies

Assuming that I have correctly identified and diagnosed the inefficiencies in our system for formulating and implementing foreign policy, I offer no sure remedies, only some hesitant views about directions and means which might be explored.

A. Should the Constitution Be Amended?

To begin, I would not consider promoting effectiveness by constitutional amendment which would eliminate or substantially modify the separation of powers. There are good arguments against separation, particularly in foreign affairs. Surely, even among western democracies sharing our political values, our separation structure is unique. There are, surely, good arguments against our particular separations: the intended division of policy-making between the treaty-makers and the law-makers could not anticipate how the country would develop, and how the institutions—the Presidency, the Senate, the Congress—would develop; the larger division of foreign policy-making between President and Congress which we now have probably was not intended at all. But major changes in our system as regards foreign affairs do not command wide agreement or support and could not be achieved readily, if at all; they could not be achieved without a major transformation of our system of government generally. The recurrent suggestion that we consider converting to a parliamentary system could not be the answer for those whose objection has been that the President has too much power and Congress not enough. In most contemporary parliamentary systems, the prime minister with a majority in parliament has virtually unlimited constitutional power, while the parliament has almost none.

I address the question of remedies, then, on the assumption that our system for formulating and implementing foreign policy is not so ineffective as to call for radical revision of our system of government; that the uses and values of separation are not exhausted; that they apply also in foreign affairs, although in different ways and degrees; that the "more effective system" we seek should maintain essential continuity with our past, and while it may require institutional changes, perhaps even some constitutional amendment, it is to be sought without sacrificing the essence of separation and other constitutional values. Indeed, some might suggest that what we seek are means to make separation more effective.

In other respects, too, I do not see the "more effective system" in constitutional amendment of lesser degree. Effectively, the only method for amending the Constitution requires—to begin with—a two-thirds majority in both House and Senate; when that majority is available, it can achieve much for our purposes without formal amendment. Since the original ten amendments which were the condition of ratification and essentially part of the original package, the Constitution has been significantly, structurally amended only in the wake of the Civil War. Instead, issues have been resolved and changes—radical as well as incremental—effected by political interpretation confirmed in battle and accommodation, sometimes also in judicial interpretation.

Thus, the struggle required, even after Vietnam and Watergate, to adopt the War Powers Resolution [42] suggests that such unsettled issues as the President's authority to use force short of war, or the right of Congress to control his conduct of war, could not be happily settled by constitutional amendment. Surely, we might wait at least to see the results of that resolution, and of Vietnam and Watergate, before considering amendment. Similarly, we do not need another round of "Bricker Amendments" [43] to define the proper scope of sole executive agreements. There is no agreement on what the line between treaties and presidential agreements should be, and I do not think it can be nicely contained in a formula. Certainly we ought not now lock some untried prescription into the Constitution. And while I would prefer that Congress should not be free to legislate in disregard of our international obligations, I doubt that a constitutional amendment to that effect could be adopted. At any rate, Congress could eliminate that issue in practice simply by legislating responsibly in the face of these obligations. Again, we should not, as is frequently suggested, amend the Constitution to require consent to a treaty by both House and Senate. The Senate, whose approval is required (in the principal procedure for amending the Constitution), is not likely to agree to deprive itself of its

[42] War Powers Resolution, Pub. L. No. 93–148, 87 Stat. 555 (1973).

[43] Principally, the so-called Bricker Amendment sought to amend the Constitution to "overrule" the Supreme Court's opinion in Missouri v. Holland, 252 U.S. 416 (1920), by providing that treaties could become effective as the law of the land only if implemented by statute, and only if the statute would be within the constitutional power of Congress apart from the treaty. *See* L. Henkin, *supra* note 28, at 146–47. Some versions of the proposed amendment would also have regulated executive agreements. *Id.* at 177.

1659

privileged status. Such a change, moreover, would not make our treaty process "more effective." And our existing system allows an equal role for the House whenever the Senate is willing to have an international agreement approved by joint resolution of Congress (instead of by the Senate as a treaty).

The general issues of separation also do not cry for resolution by constitutional amendment. Congress and Presidents both recognize that there must be some executive privilege, but not too much; how much is too much is not agreed upon and probably could not be generalized into a meaningful constitutional formula. The courts, I expect, will shape and limit the scope of executive privilege in principle, and political forces will attenuate and constrain it in practice. With the rare exception of Watergate, both branches have been generally careful not to press too hard, and political forces will be generally effective to check gross excesses.

Some of the abiding issues that might be resolved by amendment will be resolved by the courts, such as the President's alleged authority to impound funds. The courts have expanded the concept of standing to permit new issues to come before them and have reduced the political question obstacle.[44] Even the validity of the President's use of force has been considered in lower courts.[45] The judiciary is unlikely to limit presidential power when Congress has delegated it and can terminate it, or when Congress otherwise claims the power to curb the President but will not exercise it. But if Congress acts to assert authority and "supremacy," the courts, I expect, will decide the issue, generally upholding Congress. I have noted that whenever the President has acted inconsistently with what Congress has prescribed, the courts have ruled against the President.[46]

B. Institutional Remedies

In our search for greater effectiveness, we must look to additional understandings, formal and informal, between the President and Congress, and to changes in organization and procedures both within the Executive and the Legislative Branches themselves and for the conduct of relations between them.

At a time when the sense of a need for improvement is strong, and resistance to change is weakened by national malaise and political crisis, it might be desirable for Congress and the President —perhaps a new Congress and a new President[47] —to enter negotiations with a view to re-establishing general relations on a cooperative, less distrustful, less adversary basis, not to vitiate separation but to make it work better; to attempt to resolve issues of constitutional principle, singly or in a "package deal," or arrange to live with them; to experiment with new institutions and procedures as regards foreign relations in general and selected issues in particular.

We might begin with the pervasive problem of secrecy in foreign affairs and its effect on the ability of Congress to perform its constitutional functions.[48] Some secrecy is indispensable in the conduct of foreign relations, but there is surely much more than is necessary. I have no illusion that, even with the best of good will, unneeded executive secrecy can be easily eliminated; but it is time to try again, and harder. The task may require new legislation by Congress, new regulation by the Presi-

[44]Baker v. Carr, 369 U.S. 186 (1962), and Powell v. McCormack, 395 U.S. 486 (1969), suggest that the Court has adopted a more restrictive conception of "political questions" generally. While those cases did not involve foreign affairs, and while dictum in Baker v. Carr suggests that there are many "political questions" in foreign affairs, I am not persuaded that the Court will in fact find them when the issues arise. For a contemporary example, lower courts were increasingly deciding the issues of presidential power in Vietnam on their merits, not avoiding them as "political questions," and it is my guess that the Supreme Court would eventually have done the same.

While I see no reason to assume that issues of executive privilege between President and Congress would run afoul of the "political question" doctrine, they must satisfy the "standing" requirement that issues be raised by parties with a personal rather than a political interest. Thus, it has been assumed that Congress cannot sue the President to enjoin a usurpation of authority. For example, whether President Truman could seize the steel mills was an issue which could not be brought to court by Congress or by a state but was adjudicated when brought by an "aggrieved" private party. But lower courts have recently given individual congressmen standing to raise some issues related to their official functions. *See, e.g.*, Holtzman v. Richardson, 361 F.Supp. 544 (E.D.N.Y. 1973), *supp. op. sub nom.* Holtzman v. Schlesinger, 361 F.Supp. 553 (E.D.N.Y. 1973). The case was reversed on political question grounds, 484 F.2d 1307 (2d Cir. 1973), *cert. denied*, 416 U.S. 936 (1974), but the majority opinion contains strong dictum denying standing to Congresswoman Holtzman. *But see* 484 F.2d at 1315–18 (Oakes, J., dissenting on both the standing and political question grounds). In any event, issues of executive privilege can arise in criminal prosecutions, in civil litigation between the United States and a private party, or even in litigation between two private parties. As I read the cases and project from them, I expect that the courts will hold that, in a proper proceeding, if necessary, they will decide whether particular information was privileged. Now, see United States v. Nixon, 418 U.S. 683 (1974).

[45]*See* Holtzman v. Richardson, 361 F.Supp. at 544, 553.

[46]There has been one exception. *See* Myers v. United States, 272 U.S. 52 (1926), involving an attempt by Congress to limit the President's power to remove a postmaster.

[47]Since this statement was prepared, we now have both.

[48]I do not refer to executive privilege which has not, in my view, been a major difficulty, but to *unnecessary* secrecy in foreign relations, a significant obstacle to an effective foreign policy system as well as to public awareness and understanding. If we could reduce the unnecessary secrecy in foreign affairs, the significance of executive privilege would also be substantially lessened. *See* notes 32–33 *supra*.

1660

dent, or new machinery within the Executive Branch and beyond. We may need to overhaul the classification system by establishing a higher threshold for secrecy, imposing stricter limitations on authority to classify information, creating a system of automatic declassifications, legislating presumptions against continued classification, and allowing frequent review of classifications, perhaps by a body which includes congressional and public representatives.

There will still be the problem of *necessary* secrecy in foreign affairs, and how to meet the need of Congress for access to classified information and to a mass of other information which is not secret but not in fact available to Congress. The principal inefficiency in our system, I have said, is the distorting effect on the congressional function resulting from the President's monopoly of information and communication and his exclusive control of the daily conduct of foreign relations. For that major systemic defect remedies are very difficult to concoct, but the avenues to be explored are clear. Congress must organize itself and establish channels to and within the Executive Branch, so that, to the maximum extent feasible, it will be effectively informed. Congress must have the sense of our foreign policy and our foreign relations in general and in important detail, be aware of attitudes as they are being formed and commitments as they are being made, and be able to inject influence earlier in matters on which it has constitutional responsibilities, especially those on which it will have to take formal action.

We can attempt such arrangements piece-meal in regard to particular matters. I have mentioned a congressional role in declassification. Another area of obvious need is in decisions involving the use of force. Some have suggested a joint congressional committee, or a hybrid executive-congressional committee, to act as a council on war and on lesser uses of force, with continuing concern also for situations which might lead to United States military involvement.

A similar arrangement might reduce the difficulties with executive agreements. The act requiring that executive agreements be reported to the Congress [49]—or, if classified, to the two foreign affairs committees—will inevitably influence Presidents as to what agreements they will conclude on their own authority. But perhaps the Senate, at least, ought to have some entry into the process before agreements are concluded, or before they are even well along the way. Can there be a committee or council on international agreements and international political commitments, working closely with the Executive, which might advise at least as regards formal agreements or commitments, including whether agreements should go to the Senate, or to both houses, for consent?

Perhaps it is even time to experiment with new kinds of liaison in foreign relations generally. The Executive Branch has for some time had officials for congressional relations; is there a way of reversing the process so that Congress will send into the Executive Branch its eyes, ears, and voice? Perhaps a small, select group—members of Congress or their staff—should have access to the cablegrams, attend executive meetings, participate in discussions. Or there might be a special executive-legislative council on foreign affairs meeting regularly.

Let us be clear. Any novel arrangements, whether in a specific area or in regard to foreign relations generally, would be very difficult to achieve. If a recently-battered Executive Branch might be persuaded to experiment, continued effort would still be needed to keep any new arrangements alive. Even more difficult to achieve, perhaps, would be the organization, effort, dedication, and special responsibility by Congress to make them work. Congress would have to repose full faith and credit in the few individuals, legislators or staff, selected for the role; to respect scrupulously classified information and executive confidentiality; and to protect carefully the special machinery and process from partisan political abuse.

C. Cooperation-in-Separation

New organizational machinery, even if it could be established, would not be enough. New attitudes, necessary to bring about such arrangements, will have to achieve also self-policing in both branches, as well as other forms of cooperation running from Congress to the Executive as well as from Executive to Congress.

The most dramatic case here concerns the War Powers issues. There has been much debate as to the President's authority to deploy troops, or to engage them in hostilities short of war, when Congress is silent. But that issue, I believe, is largely academic. Presidents cannot deploy troops for very long without the consent or acquiescence of Congress, without indeed its active cooperation in appropriating funds and establishing other forms of implementation. The real issue is not the President's authority when Congress is silent but whether Congress can deny or control his authority. In the War Powers Resolution,[50] Congress purported to regulate that authority. President Nixon

[49] Act of August 22, 1972, Pub. L. No. 92-403, 86 Stat. 619, *codified at* 1 U.S.C. § 112b (Supp. 1973).

[50] War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973).

1661

declared that resolution to be unconstitutional as well as dangerous,[51] and future Presidents are not likely to be more hospitable; neither are future Congresses likely to retreat from it in principle.

But nothing in that resolution prevents Presidents and Congresses from acting together in future cases. Indeed, in my view, the resolution is important only as a promise of new attitudes in the future. Presidents have been warned to seek congressional approval for future uses of force and to be forthcoming and forthright in seeking it. In the future, then, we are entitled to expect that Congress will be honestly and timely informed, and new forms of interbranch liaison of the kind I have suggested would help assure this. Whether Congress will accept the responsibility of decision and maintain continuing, meaningful participation and control is another question.

New forms of liaison giving Congress continuous participation would also reduce the inefficiencies inherent in the advice-and-consent role of the Senate and in congressional implementation of foreign policy. There will be less excuse for rubber stamping treaties or appointments. There will be less excuse, on the other hand, for congressional resistance and inefficiency in appropriating funds or abuse of the appropriations process for irrelevant scrutiny of the Executive.

Continuing participation would also reduce the temptation for excessive delegations and therefore the congressional need for unusual devices to control or terminate them. Attempts by Congress to terminate delegations to the President by sub-legislative means not subject to presidential veto, such as concurrent resolutions and committee actions, might be reduced if not eliminated. It is not clear that this device responds to proven needs—that Presidents have in fact often vetoed or threatened to veto legislation discontinuing a delegation. Or Congress can avoid the entire issue by delegating authority for a fixed time or until a definite event occurs. If Presidents are unhappy with such automatic terminations and prefer unlimited delegations, they might have to commit themselves and their successors not to veto a later termination. Sub-legislative scrutiny has been used also for general oversight of executive action in foreign affairs, although the validity of such arrangements has not been determined. This device, too, reflects and responds to inadequate communication and an adversary spirit between Executive and Legislative Branches. The practice, the constitutional issues it raises, and political resistance to it all might be attenuated if there were improved institutions and procedures for inter-branch communication.

Different forms of cooperation will be required to eliminate other areas of controversy. The impoundment controversy lends itself to a particular kind of inter-branch accommodation. When there is essential difference between President and Congress as to whether to spend, our system gives the final word to Congress. But the practical pressures on the President for impoundment would be reduced if Congress had a better grasp of the range, the priorities, and other implications of the national budget.[52] Surely, especially in foreign affairs, Congress ought to consider in every case the extent to which the President should have authority not to spend what has been appropriated or to divert it to some other specified purpose.

To some extent the impoundment issue is an outgrowth of what may be, in essence, a congressional abuse of separation. A President is sometimes tempted to impound funds, or otherwise refuse to execute a congressional enactment or condition, where he was not free to veto it at adoption because Congress passed the provision as a rider to a bill which the President could not afford to veto as a whole. If Congress wishes to reduce the temptation and the asserted justification of Presidents to impound, it ought not to circumvent his constitutional right to veto by improper packaging of legislation. Otherwise, the price for discontinuing impoundment may be congressional acceptance of an "item veto."

IV. Conclusion

The suggestions I offer for remedies, I repeat, are highly tentative. I am confident only of the needs to which they are addressed—to establish new attitudes and forms of cooperation running in both directions between Congress and the Executive, to inform Congress effectively of American foreign relations on a continuing basis, and to allow Congress to participate in the process of formulating and implementing foreign policy long before it must act formally.

Separation of powers is not an adversary game. It does not imply or require that each branch must hold the other at arm's length, but rather that they work together to enable each to exercise its sepa-

[51] *The President's Message to the House of Representatives Returning H.J. Res. 542 Without His Approval* (Oct. 24, 1973), in 9 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1285–87 (Oct. 29, 1973). Despite the President's misgivings, the House and Senate voted, on November 7, 1973, to override the veto, and the bill became law. For the presidential reaction, see *White House Statement Following Action by the Congress Overriding the President's Veto* (Nov. 7, 1973), in *id.* at 1312.

[52] Since this statement was presented, the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 344, 88 Stat. 297, *codified at* 31 U.S.C.A. §§ 1301 *et seq.* (Supp. 1975), has been enacted, creating a Congressional Budget Office and strengthening congressional control over the national budget.

1662

rate, independent judgment. It does not imply or require each branch to try to keep information from the other, but rather that each branch should have the information it needs to exercise that separate, independent judgment. Any measures to those ends will help make separation of powers work, and our kind of system for formulating and implementing foreign policy more effective.

1663

Remarks

Gerhard Casper*

While I generally agree with Professor Henkin's analysis of the allocation of the foreign affairs power, I should like to provide a somewhat different emphasis, voice a disagreement, and finally address myself to a practical suggestion for creating a more effective foreign policy system.

In his statement to the Commission, as in his excellent book, *Foreign Affairs and the Constitution,*[1] Professor Henkin demonstrates that the great abstraction of separation of powers is only valuable as a starting point in describing the respective roles of Congress and the President in formulating and implementing foreign policy. Many questions remain unanswered. Some have argued, for example, that the President is the "sole organ" of the federal government for foreign affairs.[2] This notion, however, is a fantasy: the actual constitutional arrangement is one of shared responsibilities. While the President does conduct our daily foreign relations, the Congress' war,[3] spending,[4] and foreign commerce [5] powers assure it a continuing involvement in foreign policy formulation and implementation as well.

On these points Professor Henkin is absolutely correct. However, what he refers to as the "lacunae" of the constitutional blueprint lead him to speculate that the Framers had a limited conception of foreign affairs. I submit that they did not. They fully understood the complexity of foreign affairs, and they fully intended to create a constitutional framework for the conduct of foreign relations.

One of the most frequently reiterated cliches about foreign affairs, not embraced by Professor Henkin, to be sure, is that our foreign relations are infinitely more complex now than they were at the time of the nation's founding. I wonder. At the time of the Constitutional Convention, Europe presented America with incredibly intricate foreign policy problems. The Europe of that period was a tangled skein of shifting alliances, dynastic ambitions, incipient revolution, and trade rivalries. In dealing with these problems under the Articles of Confederation, the Framers undoubtedly came to appreciate the complexity of foreign affairs in a troubled world.[6] Professor Henkin says that he was surprised to find little in the Constitution on the conduct of foreign relations. I would argue that, well aware of the complexities of foreign affairs, the Framers consciously designed the Constitution to deal primarily with matters of foreign relations, defense policy, and foreign commercial affairs.[7] Significantly, they chose to grant Congress the dominant role in foreign affairs. They gave it the decisive voice in providing for the national defense and regulating foreign commerce.[8] They subjected treaties to the veto of one-third plus one of the Senators.[9] To guarantee that Presidents would not make secret deals with foreign powers, they even provided for impeachment, the ultimate deterrent.[10]

This clear purpose of the Framers to secure a controlled foreign policy offers a valuable perspec-

*Professor of Law and Political Science, University of Chicago; Referendar, 1961, Hamburg; LL.M., 1962, Yale University; Dr. iur. utr., 1964, Freiburg.

[1] L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 45–50 (1972).

[2] *See, e.g.,* Justice Sutherland's oft-cited opinion in United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319–21 (1936) (dictum), *citing out of context* 6 ANNALS OF CONG. 613 (1800) (statement by John Marshall). For two contrasting views on this question, *compare* McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy* (pts. 1–2), 54 YALE L.J. 181, 534 (1945), *with Berger, The Presidential Monopoly of Foreign Relations,* 71 MICH. L. REV. 1 (1972).

[3] U.S. CONST. art. I, § 8.

[4] *Id.*

[5] *Id.*

[6] For a chronicle of the American diplomatic efforts from the Declaration of Independence to the ratification of the Constitution, see S. BEMIS, A DIPLOMATIC HISTORY OF THE UNITED STATES 15–84 (1936).

[7] *See* THE FEDERALIST No. 45, at 303 (Mod. Lib. ed. 1941) (J. Madison): "The powers delegated by the proposed Constitution are few and defined . . . [and] will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce."

[8] U.S. CONST. art. I, § 8.

[9] *Id.* art. II, § 2.

[10] *Id.* art. I, § 3. *See* II M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 66 (1911) (comments of J. Madison).

1664

tive on the questions before the Commission. I would argue that we should take these original constitutional arrangements seriously. Professor Rostow would reply that the Constitution is better understood not as a document with an unchanging meaning but as an evolving body of law. However, I think there has been a rather large amount of epistemological onesidedness in the discussion of this question. While it would be unsound to ignore the historical fact that the Constitution has been adapted by Supreme Court interpretation and governmental practice to meet changing needs, unconstitutional practices cannot become legitimate simply by the mere lapse of time. There is no way around the question whether a certain practice is in accord with the basic scheme and purposes of the Framers. Chief Justice Marshall's dictum that it is a constitution we have to expound [11] does not offer even the beginnings of an answer.

In this regard, Professor Henkin notes that "the character and needs of foreign relations" have shaped the detail of our foreign affairs system, not the constitutional blueprint. I should be more comfortable had he referred to the *presumed* needs of foreign relations. There have been a great number of unexamined assertions about the modern character of foreign policy, some of which have a hollow ring today. One of the most common of these is the hypothesis that only the Executive Branch has the expertise to formulate and implement foreign policy. Senator Church once remarked that Presidents Truman, Eisenhower, Kennedy, and Johnson were all reared to this conviction.[12] Recent history has cast considerable doubts upon this hypothesis.[13] In any event, it has the character of a self-fulfilling prophecy. With the acquiescence of a Congress until recently shying away from its constitutional responsibilities, the President has concluded secret executive agreements, invoked executive privilege to deny access to foreign relations information, and then in turn argued that Congress lacks a proper understanding of foreign affairs. This circular pattern is as unbearable as the remedy is easy. Congress must resist the use of unauthorized executive agreements and the blanket invocation of executive privilege.

I agree with Professor Henkin that the President has the power under the Constitution to make executive agreements on purely "executive" matters. However, the circumvention of the Senate's treaty-making role by means of broadly-scoped executive agreements remains unconstitutional in spite of the volume and frequency of such agreements. Professor Henkin argues that the President has the constitutional power to declare policy, make informal commitments and understandings, and reflect general attitudes, all in the daily conduct of foreign relations. It would be foolhardy to quarrel with this assertion if by "informal" he means subject to congressional disallowance through the exercise of the appropriational and regulatory powers. But Professor Henkin apparently believes, though he expresses the belief very cautiously, that Congress would not be constitutionally justified "in refusing to support policies which are within the President's power to make." I respectfully disagree with this implication that the Congress, as a matter of constitutional, as distinguished from international, law, is bound to deliver on the President's undertakings. Given the Framers' grant to Congress of the power over war, commerce, and spending, the President has little authority unilaterally to bind the nation to anything. While this disability is perhaps inefficient in the narrow sense that it makes hard and fast international commitments by Presidents very difficult, it is written into the constitutional scheme. And it is actually efficient in the broader sense that freely given congressional consent will generally be more durable in the long run than consent coerced through some theory of constitutional obligation.

In order to carry out its historically important constitutional responsibilities in foreign affairs, Congress must also resist presidential attempts to invoke executive privilege at will. I would argue that such resistance to executive privilege has a textual constitutional sanction. Congress has the plenary power to make laws necessary and proper "for carrying into Execution" the powers vested by the Constitution in any officer of the government.[14] In doing so, Congress can even regulate, though not eliminate, presidential powers.[15] It follows that Congress has the power to regulate concerning confidentiality in government generally, including executive privilege.[16]

There may be a core of executive privilege which Congress cannot constitutionally impair. Although the concept is never mentioned in the Constitution, the Supreme Court has recently said in *United States v. Nixon* [17] that "the protection of the confidentiality of presidential communications has . . . constitu-

[11] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

[12] *See* Frankel, *The Lessons of Vietnam*, in THE PENTAGON PAPERS AS PUBLISHED BY THE NEW YORK TIMES at 642 (Quadrangle Books ed. 1971).

[13] *See generally* R. DAHL, CONGRESS AND FOREIGN POLICY (1950); J. ROBINSON, CONGRESS AND FOREIGN POLICY MAKING: A STUDY IN LEGISLATIVE INFLUENCE AND INITIATIVE (1962).

[14] U.S. CONST. art. I, § 8.

[15] *See generally* E. CORWIN, THE PRESIDENT: OFFICE AND POWERS (4th ed. 1957).

[16] While Professor Henkin suggests that the case for executive privilege is strongest in the White House and weakest as one descends further into the bureaucracy, I do not consider this standard very helpful. The legitimacy of executive privilege lies not primarily in mere proximity to the President but rather with the nation's interest in confidentiality.

[17] 418 U.S. 683 (1974).

165

tional underpinnings" in the nature of the executive power.[18] The Court took a balancing approach to the question whether a particular exercise of executive privilege is constitutionally protected, comparing the importance of the particular value that would be frustrated by such exercise.[19] It seems to me that a responsible Congress, too, must in the first instance balance the various interests at stake. In each case, it must weigh its own need for information to fulfill its constitutional obligations against the needs for secrecy in national security affairs [20] and confidentiality of presidential communications. Where the congressional and judicial balance will be struck will depend in part on the manner in which Congress safeguards the confidentiality of information it receives. But Congress should be able to prevent the more arbitrary assertions of executive privilege that characterize the present foreign affairs system.

Thus, simply by repudiating the use of broad executive agreements and demanding the information it needs, Congress can begin to perform its constitutional role in the conduct of foreign relations. I am, therefore, in complete agreement with Professor Henkin's reluctance to engage in constitutional surgery.[21] Constitutional amendments are simply unnecessary if Congress takes these and other initiatives.

In spite of Professor Rostow's criticism of what he refers to as constitutional fundamentalism, I would reaffirm the basic system established in 1787. In only one minor respect, I think, should we consider a system change. The need for this has been caused not so much by changing times as by our own constitutional amendment in another area. In giving the Senate a special role in confirming treaties without House approval, the Framers' view was that Senators would be elder statesmen performing an advisory service to the President. Since 1913, however, the Senators, like the members of the House, have been popularly elected. Given this constitutional change, and also the important legal consequences of treaties, Congress might consider a constitutional amendment allowing House participation in the treaty ratification process.[22] Nevertheless, with this one minor exception, Congress should not tamper constitutionally with the foreign affairs framework originally established by the Framers.

In conclusion, let me suggest what Professor Henkin would refer to as a sub-constitutional improvement in our present system for conducting foreign policy. As I have noted, part of Congress' constitutional responsibility to formulate foreign policy arises from its power to authorize programs and appropriate funds for the conduct of foreign relations. Today, however, the appropriations process is generally characterized by "incrementalism." Congress examines executive budget requests each fiscal year with a presumption that the appropriations for the preceding year are still justified; the Executive Branch need only justify requests for additional funds.[23] Unfortunately, Congress takes this annual, incremental approach not only when appropriating funds but also when originally authorizing programs.[24] Especially when employed at this authorization stage, the incremental approach deprives the Congress of any serious voice in the foreign policy process (as well as the domestic one). Switching from an annual to a long-

[18] *Id.* at 705–06.

[19] *See id.* at 707–14.

[20] There is dictum in *Nixon* that suggests greater weight to claims of executive privilege where its exercise would protect this need for secrecy in matters of national security. *Id.* at 706–07.

[21] I do, however, take issue with Professor Henkin's remarks that changing to a parliamentary system would not give the Congress more information and authority in the realm of foreign affairs. I would submit that the prime minister in a parliamentary government, despite his majority status, is subject to informal restraints requiring him to consult with parliamentary colleagues for their viewpoints. The foreign policy initiatives of the coalition government in Germany of Social Democrats and Free Democrats, for example, could not have succeeded without intensive prior consultations with the party leadership—which is for the most part identical with the parliamentary leadership. And in the case of such a major policy approach as *Ostpolitik*, the Brandt government sought support from the opposition as well. Thus the parliamentary system would certainly help to achieve informally what Professor Ehrlich has suggested the War Powers Resolution, Pub. L. No. 93–148, 87 Stat. 555 (1973), has done more formally—force the executive to consult with the Congress at early stages of the foreign policy formulation process.

[22] Arguably Congress has authority to continue the present system of congressionally approved executive agreements with the scope and force of treaties.

[23] *See generally* A. WILDAVSKY, THE POLITICS OF THE BUDGETARY PROCESS (1964); Lindblom, *The Science of "Muddling Through,"* 19 PUB. AD. REV. 79 (1959). For a standard criticism of incrementalism, see C. SCHULTZE, THE POLITICS AND ECONOMICS OF PUBLIC SPENDING (1968).

[24] *See Hearings on the Federal Fiscal Year as It Relates to the Congressional Budget Process Before the Joint Comm. on Congressional Operations*, 92nd Cong., 1st Sess. 129 (1971) (testimony of former Budget Director Charles L. Schultze):

> My first recommendation would be to eliminate the practice of annual authorizations. At the present time such major areas as defense procurement, construction, and R. & D., space, atomic energy, National Science Foundation, OEO, and the Coast Guard are subject to annual authorizations. . . . It seems to me that authorization committees should be engaged in basic evaluation and review of Federal programs. Each program literally cannot be carefully reviewed from the ground up each year. Rather, a cycle of evaluation and review could be undertaken with perhaps 3-year authorizations, and with a part of an agency or a major program area receiving attention each year. Thus in every 3-year cycle an authorizing committee would have completed a review of the programs under its jurisdiction. . . . Such a practice would achieve, I believe, the desirable goal of focusing attention on long-term trends and results.

But see U.S. CONST. art. I, § 8, cl. 12.

1666

term system of authorizations would remedy this congressional inadequacy. The substantive congressional committees could use such authorization hearings as an occasion for the comprehensive review of governmental policies.[25] Congress should conduct this comprehensive review without regard to the present artificial distinction between foreign and defense policy. It might even be advisable to combine the expertise of the foreign affairs and defense committees for reviewing long-term authorizations by establishing joint subcommittees along lines which make a multi-faceted policy review possible.[26]

I realize, of course, that even these modest proposals threaten powerful and established congressional and executive interests. But, to fulfill its mandate to create a more effective system for the conduct of foreign relations, the Commission must be willing to challenge these interests.

---

[25]My approach here is in sharp contrast to that of Professors Henkin and Falk, who argue instead that Congress should review foreign policies through Senate confirmation hearings. The Senate, to be sure, does possess the constitutional ability to review foreign policy in such a setting, since it can withhold confirmation of an official for any reason whatsoever. Still, review in the context of nomination hearings would be exceedingly unwise. The confirmation question primarily involves issues of individual personality and qualifications totally unrelated to issues of long-term foreign policy. Linking policy considerations to an individual's fitness for a particular post could hamper Senate attempts to formulate foreign policy objectively.

[26]Many of these budgetary recommendations may be realized in the wake of the recently enacted Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344, 88 Stat. 297, *codified at* 31 U.S.C.A. §§ 1301 *et seq.* (Supp. 1975). The Act announces it to be the duty of the new Budget Committees to study proposals for "establishing maximum and minimum time limitations for program authorization." 31 U.S.C.A. § 1301(a)(3). *See also id.* § 1322(d) (requiring multi-year planning considerations from the Budget Committee reports that will accompany the new first concurrent resolutions on the budget); *id.* § 1352(f) (requiring the Appropriations Committees to study all current laws "which provide spending authority or permanent budget authority"); *id.* § 1353 (requiring multi-year planning considerations from the Director of the new Congressional Budget Office for every public bill reported out of substantive committee).

1667

Remarks

Thomas Ehrlich*

Professor Henkin's paper—like all his work—is splendid. It is thoughtful and thought provoking.

I do have doubts about some of his views concerning the intentions of the Framers of the Constitution regarding foreign affairs, but I have none about his basic characterization of the current situation. I agree completely that constitutional amendments are not in order. I agree further that the basic problem is one of attitude—the need for a more cooperative attitude on the part of both the Executive Branch and the Congress. Our Constitution mandates a separation of powers, but not an adversary approach by each of those powers vis-a-vis the other. Having worked in the State Department, I know that many in the Department too often view Congress as an adversary. Friends on the Hill tell me that the view from there is no different.

Attitudes cannot be changed by legislative or executive mandate. But some steps, I think, can and should be taken. I suggest them as a supplement to those proposed by Professor Henkin. As a lawyer and law teacher concerned with international affairs, I am particularly troubled by the frequent failure of those in foreign policymaking positions to bring issues of international and domestic law to bear on their decisions. Other fields may be equally neglected, but I will use law as the example since it has particular relevance to this discussion of the constitutional dimensions of foreign policymaking. Three approaches seem promising—one by the Executive Branch, one by the Congress, and one by the public.

I.

One of the most troublesome gaps within the foreign-policy bureaucracy is the lack of what has been called "multiple advocacy" before the President and the Secretary of State.[1] All of us have some tendency to adopt an anthropomorphic view of foreign-policy making—that a single person decides key issues of foreign policy. In fact, of course, those issues are decided by many people in the State Department, the Defense Department, and elsewhere. All too often, unfortunately, different perspectives on a particular problem are blurred in the bureaucratic process of preparing the foundation for a particular decision. President Roosevelt developed a staff of advisers on whom he could rely to raise opposing positions and to maintain those positions until the issue reached his desk. The clashes between Harold Ickes and Harry Hopkins are a prime example. Similarly, former Secretary of State Dean Acheson stressed the extent to which President Truman encouraged officials to bring their differing views to him for resolution.

None of the existing structural arrangements in the Executive Branch promotes such multiple advocacy concerning foreign policy. The Legal Adviser to the State Department, for example, is responsible for considering the legal implications of foreign-policy decisions. But he is also, and primarily, charged with being the lawyer for the Department—for defending, in legal terms, its ultimate political judgment, whatever that may be.

A variety of approaches might be suggested for meeting this problem. In my view, the most promising would be not a new office or other formal mechanism to promote debate from differing perspectives—a devil's advocate or a new International Law Adviser—but rather a conscious policy to encourage that debate. If, for example, the State Department Legal Adviser, as a matter of publicly an-

*Richard E. Lang Dean and Professor of Law, Stanford Law School. Special Assistant to the Legal Adviser, Department of State, 1962–64; Special Assistant to the Undersecretary of State, 1964–65.

Some of the ideas in these comments were expanded and developed in Ehrlich, *The Legal Process in Foreign Affairs: Military Intervention—A Testing Case*, 27 STAN. L. REV. 637 (1975).

[1] *See* George, *The Case for Multiple Advocacy in Making Foreign Policy*, 66 AM. POL. SCI. REV. 751 (1972).

1668

nounced policy, were responsible for assuring that advocates within his office—or, if necessary, outside it—developed the strongest possible legal arguments for conflicting positions, I am certain that the Executive Branch would benefit from a fuller debate on difficult problems. In some situations, this adversary process might involve only two sides; more often, numerous options could be developed. I believe that such a practice would promote reasoned analysis of legal positions in a way that is unlikely without adversary pressures.[2]

II.

It is, I believe, even more important that new governmental arrangements be encouraged outside the Executive Branch. As a practical matter, these must be legislative arrangements, since there is little likelihood of substantial involvement by the judiciary.

What can Congress do to encourage the development of sound foreign policy? Perhaps most important, it can widen and sharpen the debate on what United States policy is and what it should be. Whatever arrangements are designed to encourage multiple advocacy within the Executive Branch, it is likely that most foreign policy decisions there will not be subject to a full adversary debate. If the Congress is given the facts of a situation—and spends the time to understand them—productive debate is much more likely. In my own view, the greatest single failure in Congress concerning foreign policy is lack of preparation—too many seem unwilling to spend the time to learn what is happening. Some steps can be taken to encourage that process. I use one as an example.

In 1973 Congress adopted—over the President's veto—the War Powers Resolution.[3] President Nixon stated in his veto message that two key provisions in the Resolution were "clearly unconstitutional."[4] More than two-thirds of the Congress obviously disagreed, and the current status of those provisions is thus unclear. But another section in the Resolution has particular relevance here, although it received little attention in the public debates and no one questions its constitutionality. Within 48 hours after deploying armed forces in foreign hostilities, the President must now submit a report on the circumstances and justification of the intervention, including a legal analysis.[5]

No one can expect preparation of a carefully reasoned, fully-developed brief within two days after a decision to use military force. But precisely for that reason, the requirement should have a useful impact. The need for justification to support a decision should be a strong incentive for a broader analysis of the impact of that decision than might otherwise be made. By requiring those in the Executive Branch to articulate the basis for an action, and to defend that basis, the Resolution will encourage them to think through their decisions more fully.

In my view, Congress allows the Executive Branch to escape with too little serious and sustained justification of its foreign-policy decisions. The Executive is seldom required to articulate the basis for its judgments in a way that involves reasoned elaborations from basic principles. That process can and should be encouraged by Congress, and the War Powers Resolution is an important step forward. I hope there will be others.

III.

Finally, its seems to me that there are ways to encourage more public involvement in matters of foreign policy than has been true over the last

[2]The advantages of multiple advocacy arrangements are not, of course, limited to lawyers or legal matters involving foreign policy. International trade issues, for example, can be sharpened and clarified by a clash of economists with different views. The same is true of experts in other fields.

[3]Pub. L. No. 93–148, 87 Stat. 555 (1973).

[4]The President's Message to the House of Representatives Returning H.J. Res. 542 Without His Approval, Oct. 24, 1973, in 9 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1285–87 (Oct. 27, 1973) (provision automatically cutting off certain authorizations after sixty days, unless Congress extends them; provision allowing Congress to eliminate certain authorities by concurrent resolution).

[5]Section 4 of the Resolution deals with "Reporting." Subsection (a) reads:

> (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—
>
> (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
>
> (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or
>
> (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;
>
> the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—
>
> (A) the circumstances necessitating the introduction of United States Armed Forces;
>
> (B) the constitutional and legislative authority under which such introduction took place; and
>
> (C) the estimated scope and duration of the hostilities or involvement.

War Powers Resolution § 4(a), Pub. L. No. 93–148, 87 Stat. 555 (1973).

1669

decade. In the first 15 years or so after World War II, a wide variety of influential organizations developed around the country to study international affairs and to promote bipartisan support for United States foreign policy. Sadly today, most of those organizations seem frayed around the edges —irrelevant to the real business of foreign affairs. Some are seen as guided by an aging establishment of a former era, others as worn-out remnants of that era.

A number of approaches are possible to encourage more concern about foreign affairs on the part of the public. The prime requisite, of course, is an Executive Branch that cares about the matter. Those with whom I have talked in the State Department now say they care—and I hope that is true.

I hope it is also true of many in Congress. There are no concentrated political pressures brought to bear on most congressmen concerning most foreign-policy issues. Neither the Senate Foreign Relations Committee nor the House Foreign Affairs Committee feels any particular obligation or desire to promote public debate on most foreign-policy issues. The role of the former toward the end of the Vietnamese War is a prime and significant exception. That role shows how much can be done by those in Congress—when they choose to act. I close with the hope that the exception will soon become the rule.

1670

Remarks

Richard A. Falk*

Like my colleagues on the panel, I agree with most of Professor Henkin's judicious formulations on the difficult matters before this Commission. I also feel that Professor Henkin exhibits a commendable respect for the practical limits on reformist impulses. My comments will therefore be confined to a discussion of two important issues upon which my views differ somewhat from those expressed by Professor Henkin—the relevance of international law to the process of formulating foreign policy and the role of unauthorized actors in its execution.

Professor Henkin fails, in my opinion, to stress adequately the importance of international law in the formulation of foreign policy. It is in the interests of the United States that legal constraints be taken as seriously in international relations as they are in domestic affairs and that violations of these constraints be viewed as deviations from the faithful exercise of public responsibility expected from members of the executive bureaucracy. Over the past century the United States has taken a leading role in the development of international rules and procedures designed primarily to restrict the discretion of national governments to use force to achieve their foreign policy goals.[1] Compliance with international law governing the use of force can be one of our most important assurances that the foreign policy process will not get out of control the way it has over the past decade, in Indochina and elsewhere. A net appraisal of what we have done during this period in violation of our international legal obligations indicates that we have damaged the fabric of our domestic society without in any sense furthering legitimate national interests abroad.[2]

It is therefore essential that a legal framework be created within which we may systematically bring international law to bear on the formulation of foreign policy. This might be facilitated by Professor Ehrlich's recommendation that the role of the legal adviser to the Secretary of State be made more effective, perhaps by institutionalizing his access to relevant policy-making arenas. For example, the legal adviser might be made a member ex officio of important decisionmaking groups, such as the National Security Council, which deal with problems likely to have international legal implications. However, other steps should also be taken to assure that our government takes international legal constraints seriously in its formulation of foreign policy. One such step would be the creation of a non-partisan post which would function, in effect, as an Attorney General for International Affairs. The creation of such a position, insulated from the electoral process, would be an important advance in bringing the law to bear on foreign policy decisions and would be an influential example for other countries.[3]

Similarly, it would be helpful to include international lawyers on relevant congressional committee staffs. Perhaps a congressional unit corresponding to the legal adviser's office in the State Department could be established. Only with such an expert resource facility can Congress properly consider the international legal dimensions of legislative matters and effectively challenge executive action which it believes violates international law.

It would also be desirable to inquire about views on international law at confirmation hearings for appointees to major foreign policy positions.[4] Such hearings could routinely include questions about

*Albert G. Milbank Professor of International Law and Practice, Princeton University. B.S. 1952, University of Pennsylvania; LL.B., 1955, Yale University; S.J.D., 1962, Harvard University.

[1]President Wilson's important role in the creation of the League of Nations and later American efforts to secure the adoption of the United Nations Charter are but two important examples of the assumption of this responsibility.

[2]Of course, the range and character of "legitimate national interests" is a matter of controversy. I would exclude from their scope interference by forcible means in the internal affairs of foreign societies undertaken to assure the retention or acquisition of governmental control by elements deemed "friendly" to the United States.

[3]For further elaboration, see Falk, *Law, Lawyers, and the Conduct of American Foreign Relations*, 78 YALE L.J. 919 (1969).

[4]I would require such a confirmation process at the very least for the Assistant to the President for National Security Affairs. Such a process would also lessen the problem posed by such a position as an unauthorized foreign policy actor, as discussed in text following note 14 *infra*.

167

the appointee's attitudes concerning the nature of our international legal obligations. This could be particularly important where the nominee has previously taken positions that have not accorded with the interpretations of international law generally held by members of the Senate. Merely forcing appointees to confront these questions would sensitize them to an important class of issues and might thereby affect the way in which they discharge their duties.

The Commission should also consider ways to weave into existing notions of public service the idea of accountability for adherence to international obligations, according such accountability explicit preference over bureaucratic virtues of loyalty and obedience. The Watergate experience has illuminated the manifold dangers in the domestic sphere of blind obedience to superior orders. We have also entered into a time when, even as a matter of domestic law and policy, we can no longer tolerate having officials implement our foreign policy on the basis of orders which are illegal by international standards and norms. After World War II we did not permit German and Japanese officials to hide their roles in implementing illegal and immoral international policies behind a defense of superior orders.[5] Even less should we wish to grant such a shield of immunity to our own officials.[6] To ensure that our foreign affairs bureaucracy will be responsive to international legal constraints, the Commission should recommend the enactment of two types of accountability statutes. One type would assure that executive officers provide Congress with a full disclosure of their activities, and the other would provide remedies against policies which violate international law. Such statutes would bring the Nuremberg tradition to bear on bureaucratic activities.

The Executive Branch thus needs institutional changes to assure its adherence to the constraints of international law. Although the process of foreign policy formulation and implementation requires that such changes focus on the Executive Branch, some improvements within Congress are also necessary. The current view that Congress is free to pass legislation that violates prior international legal obligations of the United States[7] should be repudiated. We should follow the lead of France[8] and West Germany[9] in affirming the priority of international legal obligations over conflicting domestic statutes. This Commission should realize that in the interdependent world in which we live,[10] the well-being of our own society depends to an increasing degree upon the creation of an international framework of law, order, and justice. Whether a solution to this problem requires a constitutional amendment or merely an alteration at Professor Henkin's institutional level is not so important at this stage as a realization of this condition of interdependence.

The second issue which I would like to address concerns the foreign policy role of actors not contemplated by the constitutional system. One prominent example of constitutionally unauthorized and internationally illegal activity is the Central Intelligence Agency's program of covert operations within foreign societies.[11] We need to reexamine the propriety of the CIA's foreign covert operations and to ensure congressional participation in that reexamination process.[12] We now have an invisible government which often operates in a manner not even grasped by the visible government. An amusing but alarming example of this can be seen in conversations between former White House aide H.R. Haldeman and CIA Deputy Director Vernon A. Walters.[13] It was obvi-

[5] *See* UNITED NATIONS WAR CRIMES COMMISSION, HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION AND THE DEVELOPMENT OF THE LAWS OF WAR 287–88 (1948).

[6] *See generally* Falk, *The Question of War Crimes: A Statement of Perspective*, in CRIMES OF WAR 3 (R. Falk, G. Kolko, & R. Lifton eds. 1971); Falk, *Six Legal Dimensions of the Vietnam War*, in 2 THE VIETNAM WAR AND INTERNATIONAL LAW 250 (R. Falk ed. 1969).

[7] Whitney v. Robertson, 124 U.S. 190 (1888).

[8] CONSTITUTION art. 55 (1958) (Fr.).

[9] GRUNDGESETZ art. 25 (1949) (W. Ger.).

[10] *See generally* R. FALK, THIS ENDANGERED PLANET (1971).

[11] For an analysis of the CIA's covert operations from the perspective of international law, see Falk, *CIA Covert Action and International Law*, 12 SOCIETY, March/April 1975, at 39.

[12] Hopefully, progress on this front will result from the combined efforts of the presidentially-established Rockefeller Commission, *see* Exec. Order No. 11,828, 40 Fed. Reg. 1219 (1975), and the independent inquiry of a select Senate committee, *see* S. Res. 21, 94th Cong., 1st Sess. (1975), *passed without amendment*, 1 CCH CONG. INDEX 2504 (Jan. 27, 1975).

[13] Mr. DASH. . . . Now, will you to the best of your recollection, relate the discussion that was had at that meeting [on June 23, 1972]? . . .

General WALTERS. Mr. Haldeman said that the bugging of the Watergate was creating a lot of noise, that the opposition was attempting to maximize this, that the FBI was investigating this and the leads might lead to some important people, and he then asked Mr. Helms what the Agency connection was. Mr. Helms replied quite emphatically that there was no Agency connection and Mr. Haldeman said that nevertheless, the pursuit of the FBI investigation in Mexico might uncover some CIA activities or assets.

Mr. Helms said that he had told Mr. Gray on the previous day . . . that there was no Agency involvement, that none of the investigations being carried out by the FBI were in any way jeopardizing any Agency activity. Mr. Haldeman then said:

> Nevertheless, there is concern that . . . this investigation in Mexico, may expose some covert activity of the CIA, and it has been decided that General Walters will go to . . . Acting Director Gray, and tell him that the further pursuit of this investigation in Mexico . . . could jeopardize some assets of the Central Intelligence Agency.

. . . .

Mr. DASH. . . . [C]ould it have been that Mr. Haldeman asked you or Mr. Helms . . . to first inquire at the CIA

1676

ous in these conversations that Walters thought it plausible that he himself might not know what the CIA was doing. As a result, he could not know whether or not Haldeman was bluffing in his attempts to influence CIA action.

Another constitutionally unauthorized actor of increasing importance is the multinational corporation. The influence of the MNC has been demonstrated in contexts as dissimilar as the recent ITT intervention in Chilean domestic politics and the current concern over the adequacy of crude oil supplies for the United States in the event of national emergency. It was evident that the multinational corporation was an important unauthorized foreign policy maker during the recent fuel shortage.[14]

The proper response to the emergence of unauthorized actors lies, in the first instance, in requiring increased information and disclosure on all fronts. American-based or American-controlled multinational corporations, for instance, should be required to report fully and openly on any of their operations which have implications for United States foreign policy. The President's principal foreign policy adviser should also be subject to these disclosure requirements. Another advantage of requiring confirmation for such an official is that it allows Congress to gain access to the foreign policy process through committee questioning, which was nearly impossible between 1968 and 1972. When a President shifts the locus of foreign policy formulation from the State Department to an unauthorized actor on his own staff, he significantly undermines the effectiveness of the constitutional checks and balances for foreign policy making. Congress should therefore set guidelines restricting this kind of bureaucratic evasion. Notions of executive privilege should not be allowed to preclude congressional scrutiny.

In general, Congress must be much more vigilant in insisting on full information and in countering unsubstantiated and unnecessary claims of secrecy. All too often such claims prove to be attempts to shield unpopular policies from public scrutiny within the United States. This kind of secrecy does not contribute to legitimate national security, but rather frustrates the workings of democracy.

Besides Professor Henkin's suggested correctives for the abuse of secrecy, other steps should be taken to control the role of unauthorized actors in foreign affairs. In particular, Congress should set specific and explicit limits on the foreign policy roles of such actors. The CIA, for example, should be restricted to information-gathering activities.[15] Overseas burglaries of the Ellsberg variety carried out by the CIA in violation of foreign law should not be sanctioned by the United States government, any more than such burglaries are permitted within this country.[16] Coupled with an increase in the extent of disclosure, such specifications would restore the functions of foreign policy formulation and implementation to constitutionally authorized actors.

---

whether or not there might be some problem . . . rather than saying it was decided that you should go.

. . . .

General WALTERS. I understood that to be a direction . . . since Mr. Haldeman was very close to the top of the governmental structure of the United States, and . . . the White House has a great deal of information that other people do not have. I had been with the Agency approximately 6 weeks at the time of this meeting. I found it quite conceivable that Mr. Haldeman might have some information that was not available to me.

Hearings on Watergate and Related Activities Before the Senate Select Comm. on Presidential Campaign Activities, 93d Cong., 1st Sess., bk. 9, at 3404–05 (1973).

[14] *See generally Hearings on Multinational Petroleum Companies and Foreign Policy Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations,* 93d Cong., 1st & 2d Sess. (1973–74).

[15] For descriptive accounts of the CIA's activities, giving a sense of their geographical extensiveness and their wide gamut, see P. AGEE, CIA DIARY (1974); V. MARCHETTI & J. MARKS, THE CIA AND THE CULT OF INTELLIGENCE (1974).

[16] *See* United States v. Ehrlichman, 376 F. Supp. 29 (D.D.C. 1974), *appeal docketed.*

1673

Remarks

Eugene V. Rostow*

Except for one point I shall take up later, I generally agree with Professor Henkin's explanation of how our foreign policy process developed under the Constitution. Rather to my surprise, however, I find that I agree somewhat less with his specific recommendations to the Commission.

Professor Henkin portrays the Constitution as a process of tension and growth dominated by the response of our institutions to experience. For me, this is an altogether congenial perspective. In the realm of foreign policy, the constitutional process became vivid, and intense, during the first five administrations after 1789, when the United States had to deal with problems raised for us by the great European war following the French Revolution. As Professor Casper observes, these problems were as difficult as any the nation has had to face—as difficult politically, and as difficult constitutionally. During this period, Professor Henkin rightly notes, the Constitution which had been sketched in the document of 1787 became the living Constitution we know. As problems arose, they were solved in the way in which any legal system grows, in response to experience. I do not mean to suggest that these responses of the Constitution to reality represented heretical deviations from something that could be called the "original intention." The Presidents, Secretaries of State, and members of Congress of that time knew far more about "original intention" than we know, or can ever possibly learn. What I do mean is that the growth of the law occurred, as it always occurs, through the application and accommodation of general policies—sometimes in conflict—to the nature of things, and the functional capacity of institutions. The growth of our constitutional law of foreign relations, like the growth of every other branch of our law, was the result of solving policy problems through procedures which applied, and reconciled, the relevant goals of the Constitution.

The main point of difference between Professor Henkin and me is one of jurisprudence. When Professor Henkin refers to the original intention of the Founding Fathers, he always starts his constitutional analysis with the language of the document. I much prefer to approach and read the words in their full policy context.

Professor Henkin wonders, for example, whether the Founding Fathers thought the Constitution would last. In compelling prose that still dominates our law, John Marshall wrote that ". . . [W]e must never forget that it is *a constitution* we are expounding[,] . . . a constitution intended to endure for ages to come. . . ." [1] By this, the great Chief Justice meant three things, I believe. First, the Constitution must grow and be flexible. Second, all parts of the Constitution should be read together; they reflect different aspects of a single system. Third, the Constitution embodies the principle of continuity as well as that of change. Unlike Professor Henkin, Chief Justice Marshall never began his analysis of constitutional problems with the language of the Constitution. He started with its Grand Design—with his vision of the nature of our society, and its abiding goals—using the particular wording of the written document only to confirm his analysis.

A further example may help bring out the jurisprudential difference between us. Professor Henkin suggests, at least, that the Founding Fathers intended Congress to be the dominant force in making and conducting foreign policy, with the Senate as an Advisory Council, conferring with the President at all stages of the treaty-making process. I do not believe that was the original concept of Congress' general role in making foreign policy or of the Senate's role in making treaties. I speak with great confidence, because I am sure that I do not know, and that no one else knows, exactly what the intention of the Founding Fathers was on these matters. But the experience of President Washington teaches us a great deal. It certainly establishes that the Senate simply cannot have a role of equality, or of continuous oversight, in making treaties, because it is a Senate, not the responsible Executive agency. The Senate did not even have a chair for

*Sterling Professor of Law and Public Affairs, Yale University; A.B., 1933; LL.B., 1937, Yale University. The author served as Under Secretary of State for Political Affairs from 1966 to 1969.

[1] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407, 415 (1819).

1674

President Washington; the members did not know where he should sit in consulting with them.

In any event, it is bad jurisprudence to suppose that we should be bound in a straitjacket by original intention, even if we could discover it. Original intention is an important element in the evolution of constitutional law, but constitutional law, like every other branch of our legal system, is a process of living growth. Preoccupation with "original intention" leads to a kind of fundamentalism which to me is the antithesis of wise law.

If we apply Chief Justice Marshall's method of analysis to the relationship between the President and Congress in the formulation and execution of foreign policy, we see that a Grand Design does indeed exist. It stems from the basic decision to have a President, one of the most important creations of the document of 1787, against the background of our experience with the Articles of Confederation, and our unsuccessful attempt to govern the country through congressional committees. Under the Constitution, both the President and Congress have foreign policy powers. Professor Henkin suggests that this constitutional procedure for conducting foreign policy is inefficient and ineffective. Considering our concern for democratic responsibility, and the necessities of the distinct functions Congress and the President must perform, our present system is the most effective and efficient system we can possibly have. It may not be as efficient, conceivably, as one in which the President has sole power in foreign affairs. But we do not want such a system. The dominant principle of our constitutional order is that expressed in Justice Brandeis' great dissent to which Professor Henkin refers.[2] We separate foreign policy functions in order to maintain democratic control and prevent the possibility of tyranny. Madison was correct when he said that the essence of the idea of the separation of powers is not separation at all, but a sharing of powers.[3] The system cannot work and never works unless there is a minimal degree of cooperation between the Presidency and Congress.

I do not agree with Professor Henkin's account of the modern relationship between Congress and the Presidency. Congress today is neither a rubber stamp nor a weak member of the constitutional system of shared power. Congress is not bound to uphold all the commitments the President makes in the course of his diplomacy. We know that it does not always do so. The notion that Congress is a passive tool of the President is contrary to everything I have read on the subject, and everything I myself witnessed and experienced when I was in the government. I spent at least a third of my time, and Secretary Rusk estimated that he spent half his time, consulting with members and committees of both houses of Congress. Those consultations were friendly and courteous, but they were also intensive and searching. Our Congress is the strongest parliamentary body in the world. It is strong, in my view, precisely because the executive and the legislative functions are separated, and because the Congress must therefore take independent and responsible positions on major problems of policy.

The principle of the separation of powers leads me to disagree with Professor Henkin's suggestion of a "package deal" involving greater cooperation between the President and Congress in making and carrying out policy. If one feature of our Constitution is clear, it is that the plan of our government is not parliamentary. The President and Congress are elected separately, by different constituencies, and for different terms. The Grand Design of the Constitution requires a certain separateness between them. As Article I, Section 6 makes clear, no person holding appointive office can be a member of either House. This provision does not prevent members of the Senate from serving on important international delegations, for example. But it does mean that a distance must be kept. We do not want to transform the President into a Prime Minister. I should oppose a constitutional amendment to permit such a development, if that is what Professor Henkin's obscure suggestion of a possible constitutional amendment implies, despite his disclaimer.

Professor Henkin raises the issue of Congress' delegation of some of its power to the President. I try to avoid using the word "delegation" in this way. There are some instances of true delegation between Congress and the Presidency in the field of foreign affairs. The President's discretion to change tariffs is a good example; only a statute could vest such authority in the President.[4] However, in most cases a more accurate description is that a statute combines the overlapping powers of the Presidency and of Congress. In such instances, there is no delegation, but a pooling of the respective powers of the Presidency and of Congress. Thus in the Tonkin Gulf Resolution,[5] the Formosa Resolution,[6] and the Middle East Resolution,[7] for example, language was carefully chosen to indicate that Congress and the President were making separate and also joint decisions, each exercising its own authority. No one attempted to draw a line marking the exact boundaries between the presidential zone and the congressional zone.

As to recommendations for improving our foreign policy system, I agree with Professor Henkin that we need above all a fresh spirit, a new attitude,

[2] Myers v. United States, 272 U.S. 52, 293 (1926).

[3] *See* THE FEDERALIST No. 47 (J. Madison).

[4] 19 U.S.C. § 1336 (1970).

[5] Pub. L. No. 88–408, 78 Stat. 384 (1964).

[6] Ch. 4, 69 Stat. 7 (1955).

[7] Pub. L. No. 85–7, 71 Stat. 5 (1957).

1675

and a renewal of responsible cooperation between Congress and the Presidency. This spirit is essential if we are to recover from the wounds to the foreign policy process incurred in the course of the Korean and Vietnam Wars. In stressing the importance of cooperation, we may learn from the example of the recent Watergate experience, which I consider a tremendous vindication of the health and strength of our constitutional instincts.

In the spirit of our national response to Watergate, all of us should renew our resolve to conform to the rules of individual ethical responsibility without which democracy cannot hope to survive. Of course it is unlikely that the convenient habits of evasion and compromise which characterize our public life will disappear completely. But unless a substantial number of our leaders within the academic community, the media, and the government show courage, character, and a willingness to accept reality, the Watergate experience will have been in vain. This Commission should approach its task determined to respect reality, no matter how unpleasant it may be.

The first specific issue I should like to address in this perspective is the alleged usurpation of Congress' war power by the President. Professor Henkin refers to the widely-held belief that in the Vietnam affair the rules of constitutional balance were somehow violated. That popular thesis is a myth. There was no presidential usurpation of Congress' war power in either Vietnam or Korea. Unless we confront and analyze that fact now, with the advantage of four or five years' perspective, we shall miss the true issues involved in the work of this Commission.

In the Korean War, and to a much greater extent during the war in Vietnam, we experienced naked political irresponsibility. First, the President and Congress, acting together in a constitutional mode that goes back to the time of Washington, made a series of decisions involving us in the wars. Later, when the wars became unpopular, many of the congressmen who had voted and voted and voted for them suddenly began to say that they were all the President's fault. They claimed that the President had involved the country in war through stealth and concealment. They argued that the difficulties were the result not of human mistakes in carrying out policies duly authorized and pursued, but rather of some structural imbalance in the Constitution. These representatives told their constituents, "The President has stolen our clothes while we were swimming; we have never really authorized this Presidential war." Then, having created the myth of presidential usurpation, Congress passed the War Powers Resolution [8] to cure the imaginary disease.

[8]Pub. L. No. 93–148, 87 Stat. 555 (1973).

These events have had a significant effect on the spirit of cooperation between the Executive and Congress. When the Executive Branch deals with congressmen and senators who continue to vote for a war and then say, "There's no one here but us chickens" after the war becomes unpopular, a mood of suspicion develops which is rather hard to allay. I personally have dealt with congressmen and senators about Vietnam, often reminding them that the Administration had long been trying to achieve goals which they had recommended in political speeches—reconvening the Geneva Conference, for example. Typically, their response was, "I know that, but you must remember that I have to be elected in my district. The President has to do what must be done. I must take care of my reelection." In short, a great many men slithered off the deck when the going got rough. This is simply a fact, not a reproach, something that happens in life.

It is the ultimate reason why the War Powers Resolution and other structural remedies we have been considering are so unrealistic and unreal. President Johnson was very conscious of President Truman's experience in Korea and of the political fact that Korea became "Truman's War." President Truman did not seek the support of a formal congressional resolution.[9] President Johnson had the advantage of the SEATO Treaty,[10] which is almost never mentioned nowadays, either by the President or by congressional leaders, the Tonkin Gulf Resolution,[11] and a number of other congressional actions expressly designed to approve the decisions of four Presidents under the Treaty. This experience is what President Johnson had in mind when he observed, "I knew that if I wanted Congress with me at the crash landing, they had to be with me at the take-off. But I forgot about the availability of parachutes." [12]

The problem of harmonizing presidential and congressional authority in the field of foreign affairs is not institutional or constitutional, but human and political. It cannot be solved by constitutional amendments, by statutes, or by more institutionalized procedures of consultation. These would simply make harmony harder to achieve. The result everyone wants can be obtained if we resolve to deal with these issues in a spirit of democratic responsibility. Creating a formal council on war, for example, would be neither wise nor effective. Institutionalizing the Presidency is the last thing we

[9]The reasons for this decision are explained in D. ACHESON, PRESENT AT THE CREATION, 538–40 (1969).

[10]Southeast Asia Collective Defense Treaty, Sept. 8, 1954, [1955] U.S.T. 81, T.I.A.S. No. 3170.

[11]Pub. L. No. 88–408, 78 Stat. 384 (1964).

[12]*See* Letter from Lyndon B. Johnson to the author, March 25, 1972. *See also* Rostow, *Great Cases Make Bad Law: The War Powers Act*, 50 TEX. L. REV. 833, 872 n.80, 881–85 (1972).

1676

should want to do. The President cannot be forced to deal through one structure rather than another. He should consult regularly with key people, including the heads of relevant committees and the leadership. But there will be cases when effective consultation should be in one form rather than in another, given the particular human and political situation of the moment.

I should like to register two further objections to the approach to the Commission's task exemplified by the War Powers Resolution. The first is that no one, as Professor Henkin has noted, can foresee the necessities of the future. The second and more particular objection is that on its face and in terms of its legislative history, the Resolution purports to deny the President many powers inherent in his role as the nation's chief diplomat, commander-in-chief, and head of state. The Resolution would make it illegal for a President to do what President Truman did in responding to the North Korean invasion of South Korea, or what President Kennedy did in handling the Cuban missile crisis. It would have made the expedition of Commodore Perry to Japan illegal, as well as the mobilization of troops on the Mexican border after the Civil War to persuade France to abandon support of Maximilian. It would make President Nixon's policies toward China illegal, because the heart of those policies is a diplomatic warning to the Soviet Union not to make war on China. And it would make President Nixon's reactions to the 1973 Middle Eastern crisis illegal, because he mobilized troops and threatened to use them. The Resolution would even make it impossible for a President to send a gunboat to rescue American citizens in a troubled area. It is striking that in its first tests—the airlifts out of Saigon and the *Mayaguez* Episode in the spring of 1975—leading Congressional sponsors of the Resolution were at pains to deny that it meant what it said.

It is not constitutionally possible for Congress to limit the inherent powers of the President in this way. It is ironic that several spokesmen for the Resolution claim that it does not affect the most tremendous presidential power of all, the President's control of the nuclear weapon. Everybody knows there is no alternative.

I agree with Professor Henkin that it would be a mistake to try to codify our approach to the ticklish problem of executive agreements. We have lived with it fairly comfortably for a long time. For example, the establishment of the International Monetary Fund and the International Bank [13] was handled not through a treaty, but through a statute, out of respect for the House's constitutional primacy over money bills. We have backed up international agreements in many other areas with statutes as well as, or instead of, treaties. Our participation in the United Nations is authorized not only under the U.N. Charter but also under the United Nations Participation Act of 1945.[14]

I should comment also on Congress' authority to legislate in disregard of international obligations.[15] I agree with Professors Henkin and Falk that it is important to view our role in the world in the context of the modern international law of war. Adherence to international law is and always should be a first principle of American foreign policy. We all want the United States to adhere to the rules of the United Nations Charter in its use of force abroad. But simple mechanical devices will not achieve the goal of keeping us on the track of international law. Short of a revolutionary constitutional amendment, which I should oppose, Congress cannot be denied its present power to breach our international obligations, as it did in 1798 when it terminated our Treaty of Alliance with France.[16] We should remember that many of these obligations are incurred by the action of the President alone. A vote in the United Nations Security Council, for example, is necessarily decided upon by the President, and only by the President. To say that by such action he can commit the United States to a course which Congress cannot reverse strikes me as a constitutional fantasy, and most undemocratic to boot.

Finally, I should like to address the issue of secrecy. I have a good deal of trouble with the way Professor Henkin has presented it. It is true that the degree of cooperation between Congress and the Executive Branch varies from time to time, and that the pressures of controversy can temporarily poison the historic atmosphere of understanding and cooperation. But it is very rare—in my experience, at least—for key congressional committees not to know what the Executive Branch knows. The real problem of secrecy has a different dimension—whether the President, in trying to secure or deter some particular action by another nation, should publicly announce everything that he knows about that nation's activities. While "open covenants openly arrived at" [17] are dear to my heart, prudence sometimes counsels silence. In retrospect, for example, most observers and participants believe that President Kennedy disclosed too much in his conduct of the Cuban missile crisis. They generally agree with the way in which he handled that affair, but feel that it was a mistake to put the Soviet Union in the position of having to climb down in public. In any event, subsequent Presidents, in facing simi-

[13] 22 U.S.C. §§ 286 *et seq.* (1970).

[14] Ch. 583, 59 Stat. 619 (1945), *as amended* 22 U.S.C. §§ 287 *et seq.* (1970).

[15] Whitney v. Robertson, 124 U.S. 190 (1888).

[16] Act of July 7, 1798, ch. 67, 1 Stat. 578.

[17] *See* 56 *Cong. Rec.* 680 (1918) ("Fourteen Points" speech by President Wilson).

1677

lar issues with the Soviet Union, have preferred not to trumpet out everything they know, maintaining a discreet silence in the interest of making it easier to obtain agreement. The Commission should recognize this dimension of the secrecy problem.

In summary, I should say that we do have an effective constitutional system for carrying on foreign relations—that is to say, the most effective system we can have which is compatible with our goals of preserving democratic control and responsibility, giving Congress the last word on most issues, and preventing tyranny. The growth of the Presidency has been continuous since the beginning of the Republic. It has been especially rapid during periods when foreign policy problems have been most urgent. This growth has been a response to necessity, and not the result of presidential usurpation, on the one hand, or of congressional passivity, on the other. We must continue to experiment in that way, and in that spirit.

In conclusion, I should make three basic recommendations. First, the War Powers Resolution should be repealed. This would free the conduct of our diplomacy from a doubt which may now inhibit the effectiveness of presidential warnings to foreign powers. Second, the staff of the White House should be reduced. Everyone has agreed that the White House staff has grown too big, following Parkinson's famous law. The Congress can easily reduce that staff through its use of the appropriations power. Such staff reductions would require the President to work more closely with the departments. Finally, and above all, in the shadow of Watergate, all of us should take the pledge to renew our will to assume full ethical responsibility for the integrity of our political discourse.

1673

Foreign Policy Aspects of the House Select Commission on Commissions

Representative Richard Bolling
April 1974

Organization is a major stumbling block for the effectiveness of Congress in dealing with substantive issues. The Select Committee on Committees of the House of Representatives grew out of an initiative by Speaker Albert to rationalize the jurisdiction of House Committees. After consultation with the then minority leader, Mr. Ford, it was decided that the committee would be bipartisan, that unanimity would be sought, and that factional or party causes would not be advanced in the process.

When the resolution creating the 10-man committee was presented in January 1973, a major floor fight resulted. Some were opposed because they thought that somebody else could do the job better, and others were opposed for a variety of reasons. In any event, the resolution was passed by a substantial majority.

The Committee's Vice-Chairman, Mr. Martin of Nebraska, is a conservative Republican and could not have been a better choice for the job. The other committee members on both sides were carefully handpicked by the Speaker and minority leader to be representative of their parties and of the House.

The Committee spent months listening to testimony from more than 60 Congressmen, various outside experts, and representatives of the great interests of the country. The U.S. Chamber of Commerce and the AFL-CIO were asked, as were many groups representing or purporting to represent the public interests, to the annoyance of others. Broad coalition interest groups were consulted, rather than individuals.

The Committee then turned to the real task of irritating our colleagues. The dilemma of this kind of job is that, if you change power, you change the relationships of individuals to power. Over the last 28 years or so, there has been a tremendous growth of power within the House, but in an unconsidered and uncoordinated manner.

Incidentally, we chose to deal with the problem of the House alone, not wishing to complicate matters by dealing with the Senate as well. If one tries to deal with the organization of both institutions at the same time, the degree of difficulty is ten times greater. Since the House and Senate are very different, it seemed wise not to exaggerate or emphasize the necessity for interfaces. Over the years, both institutions have demonstrated their ability to deal with each other if they wish, and to avoid dealing with each other if not. Therefore, we did not think it necessary to make the organization of the House conform to the organization of the Senate or of the Executive Branch.

It was enjoyable to listen and learn, but difficult to make up our minds on resolutions that would be both useful and viable (i.e., able to get a majority on the House floor). And then a very remarkable thing happened: the committee became a committee (for the first time in my 20 years of experience in Congress). We ended up with a group of ten people, all of whom participated actively, though none were able to put in full time on all the decisions. We went over the decisions frequently enough to end up with a community product, in a curious way as a result of a microcosm of a macrocosm working to come up with something.

My own prejudices in foreign policy are rather different from those of most other members of the committee. One of the reasons is that I arrived in Congress in the same election that brought Mr. Truman back as President in 1948, and I had been motivated to run for office because I was so concerned about foreign affairs and defense matters and very strongly supported Mr. Truman's positions.

Now, in those days, perhaps to a greater extent than many times in the history of the United States, Congress participated in foreign policy. This participation was induced by goodwill at both ends of the avenue. Mr. Truman, Mr. Marshall, Mr. Ache-

1679

son, and many others recognized that, in the divided government which existed in the 80th Congress and in the period just before I got here, there had to be a kind of bipartisan approach to the problems of the country that hadn't necessarily existed very often in the history of the country, if there were to be any policy at all. And that was one of the reasons that Congress was enlisted, but it enlisted for a longer duration than that particular period of the 80th Congress. And you had a very real confrontation, not only after the plane was in the air, but before the plane was flying, and that continued not only through the Truman years, but into and through most of the Eisenhower years.

Mr. Rayburn and Mr. Johnson were so dominant in their leadership of the Congress in the Eisenhower years that they had a good deal to say about certain aspects of foreign policy. Foreign policy at that time, while decreasingly bipartisan, still involved both ends of the avenue continuously and rather effectively, albeit not perfectly. Since then, relations have been more uneven, and I am not in any way criticizing either the Kennedy administration, the Johnson administration, or the Nixon administration in this statement. I am just merely saying that my experience led me to the conviction that it was possible to have an effective congressional participation both by the United States Senate, with its particular constitutional prerogatives in the field, and by the House of Representatives, which because of the money aspects of foreign policy had become heavily involved. This is also true for the field of Intelligence, which I will mention briefly and which is one of the areas where the Committee has made some minor suggestions.

Politicians in Congress need to be involved in making foreign policy for two reasons. First, they may have a better or as good a judgment of what the people of the country are thinking as those at the other end of the avenue. Second, Congressmen should be responsibly involved because, when things get sticky, when trouble comes, if you do not have their support, you are in a very nearly hopeless situation.

So it behooves the Executive Branch, both as a matter of theory and as a matter of the most cold-blooded practice, to involve the Congress step by step. This is not to say for a moment that the President should give up any of his powers or knuckle under to the Congress, because I think historically Congress has been probably more often wrong than Presidents, although Presidents have been often wrong in foreign policies. There is a volatility in the Congress which needs to be protected against, but, in any event, those are my prejudices and they lead in part to the result that I will describe.

Once the Select Committee decided that it was going to face up to this business of dealing with power no matter how embarrassing, we proceeded systematically. We had a solid two-day meeting, and we used Mr. Martin's draft document. We were all startled, I suppose, including Mr. Martin, to find out how much agreement there was among the 10 of us, among the seven who were actually there and among the staff, that the thrust of his approach was good.

We then turned over the detailed drafting to the two most junior members present, two brilliant younger members of the House—and I don't use that word loosely—Mr. Sarbanes of Maryland and Mr. Steiger of Wisconsin. They worked two weeks with the staff and came up with what amounted to almost all of our tentative recommendations on December 7, with one exception, and that was the one contribution that I made to the consideration of the Committee.

They proposed that we attempt in our reorganization to concentrate on four great domestic areas: energy, environment, health, and transportation. Each of these areas, however, has an impact on foreign policy, even the ones that do not seem to. Both Mr. Sarbanes and Mr. Steiger are younger than I, and they were both more likely to have a slightly different view of the world than I would have, so I was a little startled that they had left out any major recommendation in the field of foreign policy reorganization.

I was not critical, I was just surprised, and I proposed what had been in the back of my mind for a long time: that we shift trade policy and foreign economic policy from Ways and Means to Foreign Affairs as an additional major shift. I did so for two reasons. First, I had been distressed to find Congress less and less involved, to its satisfaction and I guess to the satisfaction of the people downtown, in the current foreign policy making. I had come to believe that, without a major effort on the part of the Executive to involve the Congress, there was no natural way for a committee with the foreign affairs constituency that I perceived to exist to have a very heavy involvement. Second, the Committee on Foreign Affairs of the House of Representatives did not really have a constituency in the country. Its constituency consisted of the members of the Department of State, who naturally were concerned with what it did; with people who were primarily interested in foreign affairs, which in my judgment represents a very small minority of the American people, regrettable as that may be; and in the so-called do-gooders, of whom I hasten to say I consider myself one, i.e., those who feel that we have a significant involvement in the matters that affect other people of the world.

It occurred to me that every committee that I looked at which really had a major impact had a powerful outside constituency, which usually pro-

1680

duced some kind of major competition over policy. Indeed the more I thought about it, the more I was convinced that was so. If you want a committee to be powerful, and you need it to be so if Congress is to pull together its strength and function in a rational policy, you want a great deal of constituent power concentrated in that committee.

Well, what would be simpler than a reasonable and logical shift from one committee to the other of foreign economic policy, which, of course, as you know, in the last century and the early part of this century was mainly concerned with tariffs? The issue of tariffs was the only one that divided the two parties much of the time for a number of decades, and it was of great significance for the income of the government. This situation has changed because the tariff, while still producing about 3 billion dollars, as I understand it, is now a relatively small proportion of the whole flow of funds in the Federal government, and the policy question has become obviously much more critically important. Well, to my considerable amazement, the whole committee seemed to think that was reasonable and not because I was the chairman. Indeed, if you look at our published open business sessions (and I do not recommend keeping open records because they are wild), you'd find that we did not have a committee dominated by a chairman. We had some wonderful arguments in which I was often forced to reverse myself and admit my error. So it wasn't simply because I proposed it, but because it was an idea that simply seemed to make sense.

Our proposal is terribly controversial. It raises the hackles of each member of the Ways and Means Committee, because it takes away a traditional power that most of them naturally seem to be jealously concerned with keeping.

We have, as far as I can tell—I have been out of the country for ten days so something might have happened—kept that issue from polarizing the outside constituency. The labor movement is fussing about the proposed recommendations, but primarily because we split education and labor. The great business community does not seem to have made up its mind to be against it because of this particular recommendation, nor do the segments of the business community that I would perceive to be most obviously concerned, the so-called multinationals. So I cannot tell you what is going to happen in the House, though that is one of the questions I was asked. I know the proposal will be bitterly opposed by the Committee on Ways and Means and Chairman Mills. I think we will have reasonable arguments. We, of course, are looking for all the support that we can get. Our opposition is built into our institutions, and I think that on the basis of its intent we have a rational opposition.

Now, I would like to discuss my own concerns about the intelligence field. We have included somewhere quite a remarkable document which would suggest that Congress might begin to rationally handle the matter of intelligence. But I will not go into that because we did not include it as a recommendation. We surely do not today handle intelligence in any rational way. We say on the one hand that members have a right to everything and on the other hand give them very little for very good reasons. Most members have not even heard of the Espionage Act, so we are in a considerable amount of trouble automatically. But I do not have any idea how this would work.

I think it is terribly important for people who propose change to understand that history demonstrates implicitly that you do not know the consequences of what you propose, and I think it is extremely healthy to start out by saying that you do not. There are all kinds of guidelines to make you aware of this. You can compare it to the reorganization of other institutions, you can do all kinds of things that are semi- or slightly scientific, but the fact is that these reorganizations and reforms are implemented by individuals and forces that nobody can predict, and we are never sure how they will turn out. We came to a conclusion unanimously that this was worth doing, that it was worth going through the agony of the floor fight, but none of us I think are very sure what will work and what will not.

I have not mentioned oversight, which is obviously one of the major problems with which you deal. We have a monumental amount of material and proposals on oversight, probably more on that one subject than any other, but I am not sure which of the proposals will work and which will not. We think our proposals are logical and worth trying, but we are not sure of them.

1681

The Role of the President in Foreign Policy

Arthur Schlesinger, Jr.
May 1974

I am honored to appear before so distinguished a Commission and to take part in the discussion of so vital a subject. Your mandate is to submit recommendations to provide a more effective system for the formulation and implementation of the nation's foreign policy. I would be less than candid, however, if I did not say that this mandate, insofar as it implies that the problem is susceptible to structural solutions, seems to me really a misconception of the nature of the dilemma we face. While, as I shall indicate later, I do think that certain organizational changes would improve our system of foreign policy, I do not think that such changes reach the heart of the problem. The ultimate solution, in my view, to the problem of achieving and assuring democratic control over foreign policy lies not in structure but in politics and in education.

Your objective, I take it, is to provide a larger measure of democratic control over American foreign policy. So far as I can see, there is no fail-safe machinery that will assure that control when a president wants to run with the ball and when Congress lacks the will or the courage to stop him.

The logic of government inescapably confers on the President both the initiative in the conduct of foreign relations and the day-to-day control of foreign relations. There seems to be no escape from the primacy of the Presidency and of the Executive Branch in these areas. How a president uses that primacy depends ultimately on his own character and sense of responsibility. For this reason the lasting solution seems to me to lie not in elaboration of structure but in the raising of consciousness: the raising of consciousness of presidents so that they will recognize that all momentous decisions in foreign policy should, in their own interests, be shared decisions; the raising of consciousness of Congress so that Members of Congress will accept the burden of responsibility themselves and stop taking refuge in the alibi that the Executive Branch knows best. And the way consciousness is raised is fundamentally through the give-and-take of politics and the election of presidents and Congresses that will be sensitive to their constitutional responsibilities. The best way to raise consciousness is to revive and enforce the constitutional system of accountability.

Let me warn against some solutions that have been advanced by men I admire but that seem to me, though I may well be wrong—and I am open to persuasion—not likely to produce any genuine tempering of the Presidential monopoly in foreign policy.

I might say I am concentrating my remarks on the relationship between the Presidency, the Executive Branch, and the Legislative Branch. I will say a few words about the internal organization of the Executive Branch in due course; but in the main it seems to me that the Executive-Legislative relationship is the area where the question of democratic control becomes most important.

Eminent men have proposed various versions of a committee of Congressional elders with whom the President and the Secretary of State might share their most secret information, hopes and dreams in the field of foreign relations. In spite of the fact that Dean Wilcox, Dean Rusk, and Ben Cohen, and other people who have thought a good deal about this have favored it, I have come to the reluctant conclusion that such a committee might well turn out to be an instrument rather than a critic of executive authority.

The comment in the Constitutional Convention by that highly intelligent man, Gouverneur Morris, on the proposal that the President be surrounded by a Presidential council seems to me apropos. If there was an executive council, the President, "by persuading his council to concur . . . in his wrong measures would acquire their protection for them."

The committee of congressional elders would very likely consist much of the time of precisely those senior figures most susceptible to false conceptions of responsibility and statesmanship, and therefore, most likely to go along uncritically with presidents. We know all too well the sweetheart

1682

relations that so often grow up between the Executive and a privileged group in Congress.

I fear any proposal of this sort given the automatic reverence Congress continues to accord to presidents might only add one more weapon to the Presidential arsenal.

What, then, can Congress do to strengthen its claim to at least a junior partnership in foreign policy?

I would suggest two objectives be kept in mind. Congress cannot contest with the Executive over the day-to-day control of foreign relations or over Presidential initiatives in foreign affairs. But it can, it seems to me, and constitutionally must, insist realistically on two things, and these are disclosure and accountability.

Let us first consider what can be done in the field of disclosure. Members of Congress often assert, when questioned about Congressional impotence in the field of foreign affairs, that they don't have enough information to challenge the judgment of the Chief Executive. I think this is to a considerable degree an alibi. If Congress does not know enough, it is generally because it does not wish to know enough, because it prefers to let the President take the responsibility for foreign policy. After all, there is less political risk in supporting the Executive foreign policy rather than opposing it.

I was interested in reading in Sunday's *Boston Globe* a book review in which an eminent American, Henry Cabot Lodge, who has served in both the Legislative and Executive Branches, discussed the dilemma in which Congress has gotten itself. He recalled the 30's in which "Congress was looking desperately for some way to rid itself of its responsibility. . . . The situation called for one man: Roosevelt was there and was not afraid to take responsibility. He may even have enjoyed it. But the shadowy performance of Congress at that time was not due to Roosevelt's lust for power but to the unwillingness and inability of Congress to grasp the nettle."

This is a very shrewd observation. In general, the situation we are in is not nearly so much the result of Presidential usurpation as it is of Congressional abdication.

Insofar as the lack of information is a real issue, Congress has it within its power to prescribe remedies. First, it can systematically mobilize the information in the public domain. Ninety-nine percent of the information necessary to informed and responsible judgment on the large issues of foreign policy is available to any careful reader of the *New York Times* and the *Washington Post.* The notion that classified information confers special knowledge and therefore disqualifies other people from making judgments is a self-serving theory of the national bureaucracy. The Kennedy Administration, in my judgment, would have been far better informed about Vietnam if it had confined itself to reading newspaper dispatches and had never opened a top secret cable from Saigon.

Nor is this just a whimsical view of my own. Dean Rusk, after he left the government, said, "I really don't know of any secrets which have a significant bearing upon the ability of the public to make their judgments about major issues of policy." McGeorge Bundy is testifying tomorrow before the Muskie Subcommittee on the question of secrecy in government, and he makes the same point.

In addition to reading the papers with care, Congress can use the Congressional powers of investigation to enlarge its knowledge.

My general thesis is Congress can get almost any information it really wants to get, and, therefore, when it claims lack of information as an excuse for dodging responsibility, this is not convincing.

Congress can, for example, like the Joint Committee on Atomic Energy or the Joint Committee on Internal Revenue Taxation, build up a staff with the expertise and authority—as the Senate Foreign Relations Committee has done to some degree—which would make it capable of coping with the natural security bureaucracy on more or less equal terms.

It can, as the Symington Subcommittee did, send its own investigators to check on what the United States is doing abroad. The Subcommittee sent their own staff people to 23 countries. It can summon expert witnesses from journalism and from the university. I don't think there is any part of the world about which you cannot find as good information, and often better, freer, and more independent analysis, outside the government than in the government. As the Jackson Committee does, you can even bring in experts from foreign countries and have them testify. I think that the pool of expert information and analysis available to Congress in the public domain is very, very great indeed. Thus far it has only been sporadically mobilized.

Congress can deal with the problem of Executive secrecy. Senator Mansfield proposed a joint committee on the CIA 20 years ago and Congress still has done nothing about it. Why? I imagine because most Members of Congress don't want to know what the CIA is up to.

Senator John Sherman Cooper proposed that the national intelligence estimates (NIE) of the CIA be made available as a matter of course to the relevant committees in the same fashion that the Atomic Energy Commission gives information to the Joint Atomic Energy Committee. This seems to me an entirely reasonable bill which, if Congress really wanted information, it could have passed. It has not done so.

I would be in favor of amplifying Senator

1682

Cooper's proposal to give Congress not only the power to receive NIEs but the power to commission CIA estimates for itself. I don't think Congress should have total access to all CIA intelligence estimates because many of them are linked with particular policy plans and projections, but the NIEs are not. I think Congress should be able to ask CIA for its analyses. CIA, after all, is the one agency in the Executive Branch whose interest is not in selling a program or in selling a policy. Unlike the Defense Department, for example, CIA's only interest, and its whole future, rest on being right. Therefore, the more the analytical capacity of the CIA can be tapped by the Congress, the better informed Congress could be.

Moreover, Congress can and, in my view, must overhaul the system of Executive secrecy. Experience has shown that that system as an Executive monopoly is inexorably abused and is used not to lock up that small portion of information that must be kept secret but to maintain Executive feelings of superiority over Congress and the people. Congress has power to do things about that.

If Congress really wants better information, it also has it within its power to improve its own research and analysis resources. It could relieve the Congressional Research Service of its obligation to do short-term research and transform it into a genuine policy research institute for Congress, the Congressional equivalent of the Bureau of the Budget in its detailed knowledge of alternatives or legislation and administration.

Congress, it may well be, relies on lack of information as an alibi for its acquiescence in Executive control of foreign policy. The opening up of information would not solve the problem, but it would at least destroy the alibi.

I think measures assuring disclosure should be accompanied by measures enforcing accountability.

The President, it seems to me, must have some discretion in managing foreign policy. Perhaps it would be better if the Presidents managed foreign policies through strong Secretaries of State, Defense and Treasury. But the disbursement of this power through the departments may increase the need for effective White House coordination. But, if the President takes the management of foreign policy into the White House, this cannot be permitted to mean that he can take it out of the sight and jurisdiction of the Congress.

I therefore offer a couple of remarks about the White House staff. I do not favor statutory limitations on the Presidential staff. I do favor, however, a reaffirmation of President Roosevelt's stipulation in the Executive order setting up the modern White House staff after the passage of the Government Reorganization Act of 1939. Roosevelt said special assistants "shall be personal aides to the President and shall have no authority over anyone in any department or agency. . . . In no event shall the Administrative Assistants be interposed between the President and the head of any department or agency".

So long as Presidential assistants remain within Roosevelt's definition of their job, serving as the eyes and ears of the President, it seems to me that they are properly covered by executive privilege—by the "advice" privilege as it is sometimes called—and that the President should be able to use them as he wishes within the law.

But when White House assistants begin to move beyond the original Roosevelt conception of what they should do, when they begin to exercise authority over departments and agencies, issue orders to departments and agencies, and interpose themselves between the President and the departments and agencies, then it seems to me they should no longer be protected by executive privilege from appearance before Congressional committees. In the more extreme cases like the Director of OMB, who is more powerful than most members of the cabinet, or in cases when the Special Assistant for National Security operates as a *de facto* Secretary of State, it seems to me the White House aides should be subject to senatorial confirmation. Such a check is essential at all points where large power is exercised and as part of the process of accountability.

Moreover, no president should be allowed to forget, in the euphoria with which they sometimes build up their staffs, that in the Second World War, when the burdens on the Presidency were far greater than they have been at any point since, President Roosevelt never had more than 11 special assistants in the White House.

The point has been raised: Does technology make any difference to all this? That seems to me a myth. My friend, Dick Neustadt, has said that technology modifies the Constitution. The allegation is made that the President must have greater need for split-second decisions in the nuclear age. As I say, I think that is a myth. If there is no time for consultation, the President obviously has the moral and constitutional right and duty to decide on his own response. But that has been true from the beginning. Madison in the Constitutional Convention talked about the presidential power to repel sudden attack.

It may be that technology, far from increasing the need for unilateral Presidential action, reduces it. There was a much stronger case for unilateral action in 1790 when it took a month to convene Congress than there is today with jet aircraft and telephones and other modern instruments of communication. It is possible to convene Congress very quickly and to communicate very swiftly. In the case of an attack, of course, or something equivalent to

1680

that, the President must decide. As far as I can see, there has only been one, possibly two, occasions in the last 30 years which called for swift Presidential decisions in circumstances not permitting effective Congressional consultation. One was the Cuban missile crisis, and the other was the response to the North Korean invasion of South Korea, which in the first stages at least required immediate action.

I think certain steps can be taken in the way of enforcement of accountability. I have in mind, for example, Senator Case's bill requiring registration of executive agreements with the Foreign Affairs Committees of both Houses. This seems a wholly valuable statute. The War Powers Act also may have some value in this respect, though I am less sure of this. That Act legitimates the transfer of the war-making power to the Executive and presupposes a Congressional will which has not been particularly visible to restrain and terminate hostilities in progress.

The ultimate solution, however, seems to me to lie not in measures strengthening an adversary relationship between the two branches and institutionalizing a tug of war over the control of foreign policy but rather in the revival of the comity that is the best medium for the exercise of shared powers, the comity that has characterized the most successful periods of Executive-Congressional relations.

I would, therefore, oppose Presidential efforts to seize the war-making power from Congress or to act as if foreign policy were a sacred Presidential monopoly which Congress had a solemn obligation to support.

I would equally oppose Congressional efforts to seize the last word on such questions as Executive agreements, peacetime troop deployments, executive privilege, impoundment and the like. This may be an inevitable reaction to the imperial Presidency, but it is not a good long-term way to run the American government.

It all gets back, as I see it, to the problem with which I began. There is no way to force a president, who is intoxicated with power or who is fearful of face-to-face confrontation and argument, to consult Congress and to level with the people. Machinery imposed on such a president will result in mass Congressional briefings in the White House and deceptive speeches on television. Presidents obsessed with the secret and unilateral use of power will be able to evade or pervert almost any restrictions or machinery.

If we want to restore comity between the two branches, if we want to be sure that the great decisions of foreign policy will be in a genuine sense shared decisions there is only one way: that is to elect presidents who have the desire and inner confidence that will lead them to consult with Congress, and to elect Members of Congress who will be more interested in meeting than in escaping their responsibilities in the field of foreign affairs.

I would conclude by saying that serious consultation and the sharing of decisions will help everybody because it will produce foreign policy based on wide and abiding consent. Presidential effort to monopolize foreign policy is self-defeating even from the President's own viewpoint. As Governor Harriman told the Senate Subcommittee on Separation of Powers in 1971, "No foreign policy will stick unless the American people are behind it. And unless Congress understands it the American people aren't going to understand it." Machinery, no matter how ingenious or comprehensive, can never make up for the absence of wisdom in the Executive Branch and the absence of will in the Legislative Branch.

Congressional Leadership and Foreign Policy

Senator Mike Mansfield
June 1974

For the most part, these observations will relate to the Senate and not to the House. The reasons for treating the two bodies separately are numerous and well-known, and I need not dwell on them. But it should be emphasized that such distinctions do not rest in any great measure on the old premise that, because of its treaty and nomination confirmation powers, the Senate has a pre-eminent position which diminishes the House role to an appreciable degree. In noting this, I am taking issue to some extent with the conventional wisdom of almost two centuries, and one which is little changed in contemporary political science texts. The explanation for my comment in itself may shed some light on the subtle changes which have been taking place in our governmental system.

A few weeks ago there was an article in the *New York Times* on the theme that the House Committee on Foreign Affairs was gaining strength and prestige, partly at the expense of the Senate Committee on Foreign Relations. Some sub-editor—and surely not the reporter—could not resist entitling the article to indicate that Chairman Morgan was somehow diminishing the stature of Chairman Fulbright. Nothing could be more mistaken and misleading than to deal with the subject in such personalized terms. The more notable elements of truth in that newspaper article related to the points that the House Committee had made a special effort to expand its subcommittee operations and staffing, and that the subject matter coming under the Committee's jurisdiction was expanding.

On the latter score, one of the most important factors which has broadened the House Committee's scope and involvement has been the passage of legislation which makes it mandatory for any Administration to send all executive agreements (including classified ones) to the foreign policy committees of the Congress. Rather than there being competition between the two Committees, it was a Senate initiative which started this process and resulted in what is called the Case Act, named for Senator Clifford Case of New Jersey. The fact that he is a Republican also sheds light on the generally non-partisan character of the proceedings in the Senate Committee on Foreign Relations—and in the Congress as a whole.

Further illumination as to the comparative powers of our two Congressional chambers is provided by the fact that treaties over many years increasingly have dealt with less and less significant items, and seldom give the Senate an advantage over the House because of jurisdiction. By the same token, the role of ambassadors generally has been so diminished over the last two decades that the confirmation power exercised by the Senate Committee is of relatively minor consequence compared with the situation prior to the Second World War.

These prefatory remarks are necessary in order to emphasize that, while there are indeed some differences between the Senate and House Committees dealing with foreign policy, they are not so much the advertised ones as they are ones which derive from the very natures of their parent bodies. And let me stress the point that minor occasional instances of jealousy and competition are much too trivial matters to be worthy of our attention. Nevertheless, before leaving the subject, I would like to note that the subcommittees of the House Foreign Affairs Committee increasingly have been holding worthwhile hearings and producing valuable information which is helpful not only to the Congress, but to the executive branch and, most importantly, to the public as a whole.

Since the requirement for these papers is couched in terms of the Leadership, I am placed in the difficult position either of seeming to defend or to praise myself. Let me therefore try to make it as clear as possible that we are dealing in institutional, rather than personal, factors. I believe that there have been some definite improvements in the organization of the Senate which affect the conduct of our foreign policy, as well as other business. Almost none of these mea-

1686

sures taken alone is of dramatic importance. Cumulatively they are quite significant.

In the first place, the Democratic Policy Committee has frequently taken up foreign policy questions for discussion and in the effort either to provide guidance or to create something resembling a Party position. This practice has not meant any encroachment on the jurisdiction of the Committee on Foreign Relations—and it was certainly not intended to do so. Since the Policy Committee is not a legislative body, but one which brings important members of the Senate together for discussion, there is little chance that there could be a conflict arising from greater use of that body. In any event, just as I am a member of the Committee on Foreign Relations, the Chairman of the latter Committee is also a member of the Democratic Policy Committee. Even if this were not the case, however, we would surely consult closely and keep each other informed of our activities and those of our colleagues which bear on the foreign policy scene.

Secondly, we have taken steps to make increasing use of the full Senate Democratic Conference, or Caucus, to discuss foreign policy issues and to try to create a consensus. The fact that we have used the Caucus in this way must not be taken as a partisan activity. On the contrary, on more than one occasion—and I should specifically note the difficult though successful effort in February 1971 to pass a Vietnam resolution—we have been attempting to help the President, regardless of Party affiliation, overcome a severe foreign policy problem.

In the third place, it is necessary to stress the changes which have slowly come about in the Senate with respect to the naming of members to Committee assignments. People uncritically accept the old tales about automatic seniority and the longevity of appointees. They do not realize that there is now a three-fold process governing the appointment of Democratic Senators to Committee assignments. First, the Steering Committee elects new members by a secret ballot; second, these selections or existing assignments may be challenged in the Party Conference and separate votes taken on Committee chairmen and ranking members; third, any or all of these assignments may be contested in an open vote on the Senate floor. Admittedly, we are a long distance from creating a model of perfection. On the other hand, Senators have received virtually no recognition for the fact that we have moved as far as we have. Any progress on such an extraordinarily complicated and delicate question must be counted as a signal advance.

Perhaps the real difficulty is that few observers—excepting the historians—comprehend the distance we have come in two or three decades. Not many people realize that even the posts of Majority Leader and Minority Leader are an invention of the 20th Century, and indeed of the last 50 years. Equally significant, it seems little understood that there were not even policy committees in existence prior to the end of the Second World War. Recognizing the complexity of parliamentary business, I think it no exaggeration to say that we have moved a considerable distance in the last 20 years to 30 years, and that we have no reason to feel sheepish about our accomplishments, quite the contrary.

We have written about the devices and instruments which have been created in the Senate and which relate at least in part to the foreign policy process. The question now is how much an individual leader can actually accomplish by employing such mechanisms. Here the answer is much more unclear and open to argument. I think we have to start with the view that, just as the President is both the Chief Executive and a Party leader, so a Senator with a leadership role is at the same time a member of the Senate, a representative of his state and a Party supporter. In view of the unique character of the Senate—where literally nothing can be accomplished in the absence of a degree of comity—no leader can attempt to use strong-arm methods. My own belief is that, especially since all Senators are equal in dignity and responsibility, it would not be proper to attempt to bully or otherwise to try to pressure colleagues into agreement. Even if it were appropriate, it would be self-defeating. The Majority and Minority Leaders have to be honest brokers, traffic cops and stimulators of moves toward consensus. Even if they employed other individuals to do their "dirty work," which I cannot believe would happen, how could they retain the trust of their colleagues—which is an absolute essential for accomplishing the business of the chamber?

We have heard many definitions of a Committee: none of them is flattering. Yet the hard historical truth is that there is no single Congressional figure who can hope to match or challenge the authority of the President or to deal with him from an equal footing. The strength of Congressional leadership depends on backing in each Chamber. In the last analysis, this means that we must look to our standing committees for support, while at the same time trying to give them guidance and stimulation from the well-springs of Party leadership.

Those committees concerned with foreign affairs in recent years have done a good deal to improve and strengthen their procedures. They have done so in different ways, reflecting their differing interests and responsibilities. The Senate Armed Services Committee, under the leadership of Senator Stennis, has made increasing use of subcommittees to develop and place on the public record far more data about the heretofore largely mysterious and enormously complicated requests and activities of

1687

the Pentagon. Under the Chairmanship of Senator Fulbright, the Foreign Relations Committee has placed a good deal of useful oversight legislation on the books designed to restrain and guide the executive branch. It has also developed new methods of gaining information about executive branch actions —and that essentially is the kind of information we need most, as distinct from some vague notion of a worldwide intelligence coverage.

Thus, we have had an ongoing effort in the Senate to increase and improve Congressional participation in the foreign policy process. Yet even our most heroic efforts cannot do much more than halt the erosion of power toward the Presidency unless there is cooperation from the executive branch. Until recently, we have had to fight every step of the way, because the State Department was virtually paralyzed by White House and NSC strictures about "executive privilege" and "national security." Now the appointment and performance of Secretary Kissinger have changed the picture substantially for the better.

On the other hand, we cannot rely for the longer term upon powerful and talented individuals, as distinct from clear-cut organizational methods. A natural tension between the branches is built into our Constitution and will be there long after personages pass from the scene; indeed, just as long as our system of government remains. I recall strongly deploring in 1960 the growth of the NSC staff along with the loss of the cabinet's significance, especially because of the latter's accountability to the Congress. It seems of the utmost importance today—far more than 15 years ago—to streamline the regular departments and agencies, to give them more effective roles, and to reaffirm their accountability both to Congress and to the President.

For us in the Senate, I would not deny that there may be a number of relatively small steps we might take without undue conflict in order to improve our foreign policy performance. However, perhaps my best advice is to recall immodestly my words in the Senate on November 27, 1963:

> "We are not here as actors and actresses to be applauded. We are here as Senators to do the business of the government."

And, of course, I meant and still mean the word "government" to stand for the word "people."

1658

Congressional Party Leadership and the Impact of Congress on Foreign Policy

Randall B. Ripley
April 1974

Many social scientists, when called on to testify before congressional committees or before commissions such as this one, are very reluctant to reach conclusions and state value preferences. Instead they will engage in an analytic exercise appropriate to their expertise and will assume that the members of the committee or commission should be able to draw their own conclusions and make their own inferences from the logic of the presentation. Although the analysis is often sound, many times very little that is useful gets transmitted to the members in the process.

My stance today will be quite different. I am going to start by stating the goals for Congress in the realm of foreign policy to which I subscribe. Second, I am going to make general assertions about some of the measures that ought to prove helpful in aiding Congress to meet these goals. And third, I will present a more detailed analysis and a more detailed set of recommendations in one area I think important and that I have studied in some detail—the role of the central party leaders in Congress in helping determine the actual and potential impact of Congress on foreign policy.

Goals for Congress in the Foreign Policy Arena

In the broadest terms I would posit the following goals for Congress: first, that its members should possess both the will and ability to examine critically new proposals coming from the executive branch and executive branch performance in ongoing programs; and, second, that its members should possess both the will and ability to undertake at least some initiatives in the foreign policy arena. These goals are realizable even within the limits created by the existence of a presidency and executive branch that will remain at the center of foreign policy making.

The will of members to achieve these goals is based in part, of course, on the qualities of mind and character of the members of the House and Senate. I have no prescription for how to bring the right people into Congress and can only express a hope and an exhortation. However, I also think that will is related to perceived ability. If members perceive their institution as having little ability to achieve much in the foreign policy arena there is little incentive to develop or express any will in that direction. If, however, the institution is perceived as developing the capacity for important impact on foreign policy, then will may suddenly begin to grow. As I read the mood of Congress at present I think that considerable will to be influential in foreign policy is present and institutional ability to achieve influence is certainly not absent. But I think there are important ways in which the institutional ability can be enhanced, and this is likely to have a salutary effect on the will of the members too. The rest of my presentation is devoted to the general question of how to increase the ability of Congress to have impact on foreign policy.

Some General Prescriptions

Congressional ability to influence foreign policy is based on a number of factors. These include access to information on a timely basis, timely access to key executive branch officials who possess additional information, a willingness on the part of the executive branch to take the initiative in consulting with Congress before decisions are finally made, statutory language that routinizes oversight activity, and institutional arrangements within Congress that facilitate concentrated and mean-

1689

ingful congressional attention to foreign policy problems.

Access to information will be facilitated by the continued quantitative and qualitative upgrading of staff available to the committees and subcommittees dealing with foreign policy matters. The proposals of the House Select Committee on Committees for all committees in terms of staff improvement make sense in this regard. Hopefully, the House will adopt these proposals and the Senate will follow suit.

Several kinds of statutory language promote heightened oversight activity as a matter of course and should be included in the most important statutes affecting foreign policy. For example, explicit standards for administering programs can be written into statutes and proof of meeting these standards can then be demanded from the executive branch. Even more important, goals in legislation can be stated in such a way as to make progress toward them measurable, not just in some vague, anecdotal way but in a more systematic, quantifiable, and rigorous way. It might also be wise for Congress to include automatic termination dates in basic statutes establishing specific programs. Thus continuation would not simply be assumed but would need to be justified as the termination date approached.

One institutional change that makes sense to me is the Bolling Committee's proposal to expand the jurisdiction of the House Foreign Affairs Committee as a way of giving the committee a fuller purview of the foreign policy arena and simultaneously enhancing its status in the House.

Finally, I think that a strengthening of the place of the formal party leaders in the House and Senate can be achieved in such a way as to enhance the congressional role in foreign policy.

It is to this area that I want to devote my major attention and analyze the present situation in some detail and pose some possible alternatives. I wanted to set these detailed comments in the broader context of my previous remarks, however, to make it clear that I do not view strengthening the hand of the party leaders as the only measure that is needed or as a cure-all for congressional malnutrition at the foreign policy table.

The Place of Congressional Party Leadership in Promoting Congressional Impact of Foreign Policy

Within the House and Senate the party leaders have the most potential as centralizing forces in the legislative process. The standing committees are usually the most important decentralizing forces. In general, it is argued here that Congress as a collectivity stands a better chance of maximizing its substantive impact on policy when the leaders are relatively strong and aggressive than when they are relatively weak and passive. But it is also argued that strong leaders should not be equated with weak committees or with presidential dominance, even if the president and the majority in the House and Senate are of the same party.

The discussion that follows is organized into six sections. First, the nature of leader-committee interactions will be analyzed. Second, some general patterns of leader-committee interaction will be identified. Third, the impact of these different patterns on the lawmaking and oversight functions of Congress will be indicated, with special attention to the situation in the foreign policy arena. Fourth, differences between the Senate and House that impinge on the possible role of the party leaders in the foreign policy arena will be noted. Fifth, some ways of strengthening the party leaders will be suggested. Sixth, the results of having strengthened party leaders for congressional impact on foreign policy will be investigated.

The Nature of Leader-Committee Interactions

Leaders and committees must necessarily interact in conducting the business of the two chambers. The exact nature of the interactions, however, can vary as can the relative importance of leaders and committees on critical items of substance.

In many ways leaders and committees are interdependent. As party leaders seek specific legislative ends they must rely on the standing committees for a number of things: the detailed substance of bills, the timetable within which bills are ready for floor consideration. Committee leaders must rely on the party leaders for scheduling business for the floor and helping work for its passage or defeat, for communicating important information about members' preferences to the committee, and for helping distribute committee opinions to non-committee members.

There are three particularly important points of interaction between committee leaders and party leaders. The first involves assignments to committees. Who sits on a committee may, in many instances, determine what emerges from that committee. As with most facets of congressional life, change has occurred: the relative influence of party leaders has varied considerably through time. At present the leaders of both parties seem disposed to limit their interference to special occasions. The custom of seniority limits leaders' potential impact on committee assignments to sitting members who desire to change assignments or to sitting new members. And in the case of freshmen members

1690

and new assignments the leaders of both parties are generally disposed to exercise only minimal influence unless vital issues are at stake.

In changes made in 1971 and 1973, however, the House party leaders have moved into a position to develop some potential for heading movements to prevent individuals from becoming chairmen or ranking minority members if they can persuade a majority of the party that such individuals are undesirable in those positions. In 1971 the Republican Conference agreed to allow the Conference to vote by secret ballot and one at a time on the individuals nominated by the Committee on Committees to be ranking minority members. If the Republicans should again become the majority party in the House the same procedure would presumably apply to chairmanships. No successful challenges to seniority appointments have been made under the new procedure.

In 1971 the Democratic caucus made a similar change. Committee on Committee recommendations come to the caucus one committee at a time and, if ten members request it, nominations can be debated and voted on—not just for chairmanships but for any position on any committee. If a nomination is rejected then the Committee on Committees will submit another nomination. In 1971 an unsuccessful challenge was mounted against reappointment of the Chairman of the Committee on the District of Columbia.

In 1973 the Democrats extended their procedure by making it necessary for chairmen to obtain a majority vote in the caucus. Twenty percent of the members can demand a secret ballot. In 1973 all 21 chairmen (all of whom had advanced to that position by virtue of seniority) were voted on by secret ballot and all won by very large margins.

In short, despite the lack of real change in personnel thus far, both parties in the House have the machinery for rejecting an unacceptable product of the seniority system in the top spot in any standing committee. The Republican Conference members and Democratic Caucus members could, of course, ignore the preferences of the formal party leaders either to retain or reject a chairman or ranking minority member. But it seems likely that members who have come to those positions through seniority will not be deposed if they have the support of the party leaders. And, if the party leaders should ever agree on the necessity of rejecting a nomination for a top position based on seniority they would probably stand a reasonably good chance of carrying either the Caucus or the Conference with them.

A second major point of interaction between party leaders and the committee system involves the scheduling of floor activity that, of necessity, has implications for the scheduling of committee business. If the party leaders of the majority party have an overall program in mind (and this is particularly likely to be the case if their party also controls the White House) they are going to have some need to spread the program out over a Congress. They cannot afford to have all of the important legislation come to the floor of the House in the last two months of a session or, worse yet, the last two months of a Congress. Thus the leaders are going to be consulting with chairmen about major items on the agenda both to get some reading on when reports might be expected and to make some requests either to speed up or, less frequently, slow down, committee consideration and action.

Similarly, committee chairmen have their own agenda to consider. Therefore, they will make timing requests of the leaders for floor consideration on specific dates.

A third point of interaction between party leaders and committees involves the substance of legislative proposals. Party leaders may well be too busy with scheduling matters for the floor and working for their passage (or defeat) to have preferences on the substantive details of legislation. They do, however, have general preferences and, particularly if they are working supportively with representatives of the White House or individual executive departments or agencies, they may have detailed requests on some matters.

In general, leaders in the last few decades have kept their intervention in the substantive work of standing committees to a minimum. They have been much more likely to allow the committees to produce their substantive products by whatever natural processes exist in the committees and then work with the senior committee members for passage (or defeat or amendment) of their handiwork.

A rule adopted in 1973 by the house Democratic Caucus increases the likelihood of more substantive input by the leaders into the work of committees. This rule allows 50 or more members of the party to bring to the Caucus any amendment proposed to a committee-reported bill if the Rules Committee is requesting a closed rule. If the proposed amendment is supported by a majority of the Caucus then the Rules Committee Democrats will be instructed to write the rule for floor consideration so that that specific amendment could be considered on the floor. In effect, this will prevent closed rules on bills if a majority present at a Democratic caucus opposes such a rule. The leeway for leadership intervention is again present here if the Speaker and/or Majority Leader and/or Majority Whip should decide to side with the members who want to force floor consideration of a specific amendment not favored by the committee (including at least some of the Democrats on the committee).

1691

Patterns of Leader-Committee Interaction

There are five basic patterns of interaction between party leaders and standing committees. These patterns are characterized by the degree (high or low) of the leaders' intervention in the three important aspects of committee functioning identified above (assignments, scheduling, and substantive questions). The plausible patterns of intervention range along a spectrum of leader activism at one end to committee autonomy at the other. Table 1 summarizes the five patterns of interaction.

The Impact of Interaction Patterns on Lawmaking and Oversight

The patterns of interaction have differing consequences for the way in which Congress performs its principal functions, especially lawmaking and oversight of administration.

Lawmaking. There are a number of participants in the legislative process who seek access in order to maximize their influence. The main participants are the president and individuals in the institutional presidency, bureaucrats in all parts of the executive branch, interest group representatives, individual members of Congress, members of specific committees and subcommittees, and the party leaders. The nature of leader-committee interactions affects the relative standing that these participants possess in the lawmaking process.

Lawmaking for domestic policy and the domestic aspects of foreign policy (for example, defense procurement or "buy American" or "ship American" provisions in foreign aid legislation) on the one hand and lawmaking for the non-domestic aspects of foreign policy on the other present situations different enough to be analyzed separately. But one central fact pertains to both kinds of policy-making at present: the congressional party leaders tend to be left out of an important substantive role, and that restriction on the leaders tends to reduce the potential impact of Congress as a collectivity in both broad areas of policy.

Lawmaking for Domestic Policy and Domestic Aspects of Foreign Policy. The president and individuals in the institutional presidency (principally the White House and the Office of Management and Budget) are dependent in part on their relations with the party leaders for their access to Congress. The leader activism pattern of leader-committee interaction can serve the president quite well if the leaders of his party are in tune with his policy preferences (as they generally are). Naturally, the president's access can also be limited if the leaders of the party other than his are involved and if they are working against his policy preferences. The president may be particularly severely limited if the opposition party also controls Congress. In the three mixed mode patterns the president may be afforded access if the leaders use their influence to put individuals in sympathy with presidential legislative objects on key committees and if his programs are pushed by the leaders as they attempt to help set committee schedules for action. In the committee autonomy pattern presidential access is probably limited. He cannot in this pattern use the normally close relations with the leaders of his own party to facilitate access to committees but is instead forced to seek direct access. Necessarily he is likely to have good personal relations with only a few committees. Even top officials in the White House and OMB will only have limited contacts and access if essentially deprived of the good offices of the party leaders.

The access of bureaucrats, interest group representatives, and committee leaders typically varies together. In the leader activism pattern, constraints are placed on the functioning of "subgovernments" (to use Douglass Cater's term) that often dominate policy-making in individual subject matter areas. These subgovernments are ordinarily composed of a few key bureaucrats, a few key interest group representatives, and a few key committee members (typically subcommittee chairmen and ranking minority members). Critical decisions are made at the subcommittee level and routinely ratified in full committee and on the floor. Thus the few individuals in the subgovernment essentially make policy,

TABLE 1.—PATTERNS OF PARTY LEADER-STANDING COMMITTEE INTERACTION

	Degree of Party Leaders' Intervention in:		
Type of Pattern	*Committee Assignments*	*Committee Scheduling*	*Substantive Questions Before the Committee*
Leader Activism	High	High	High
Mixed Mode: Personnel and Scheduling Focus	High	High	Low
Mixed Mode: Personnel Focus	High	Low	Low
Mixed Mode: Scheduling Focus	Low	High	Low
Committee Autonomy	Low	Low	Low

1692

particularly on matters that are seemingly routine. The leader activism pattern does not eliminate the functioning of subgovernments but it may impinge on it as leaders intervene in some specific policy decisions and use influence over assignments to alter the ideology or policy stance of a committee. The mixed mode patterns place successively fewer constraints on the functioning of the subgovernments (and the access of the bureaucrats, lobbyists, and key committee members). And the committee autonomy pattern leaves the subgovernment relatively unfettered, unless a given matter becomes highly visible to a wider public.

The access of the party leaders is, of course, a mirror image of the access of the subgovernment participants. The potential for maximum impact by the leaders on public policy is present in a leader activism pattern, diminishing potential is present in the three mixed mode patterns, and very limited potential is present in the committee autonomy pattern.

The access of individual members of Congress not on a given committee to the work of that committee is relatively low in all five patterns. There are some points of access at the leader activism end of the spectrum, however. In the leader activism pattern itself individual members can maximize their impact on the business of committees other than their own through an active party caucus or conference. For example, if the party leaders side with those pushing for the admissibility of an amendment on the floor under the new rule adopted by the House Democrats in 1973 this enhances the potential access of rank-and-file members. Under the leader activism pattern and the mixed mode patterns in which the leaders' impact on committee assignments is high, individual members can, in effect, gain access to committees not their own by persuading the leaders—if they have good relations with them—to help obtain seats for them on the committees in which they are particularly interested. But this is a very limited kind of potential and given limits on committee memberships, an act that also has costs—an assignment probably has to be surrendered in order to get a different one.

The judgments about relative access that are discussed in the preceding paragraphs are summarized impressionistically in Table 2. The leader activism pattern is the only one with even moderate restrictions on the issue-area subgovernments. Those subgovernments may or may not produce "good" or reasonable policy but, in any event, they cannot be expected to consult more than a narrow range of interests in making their decisions. The access that is opened in the leader activism pattern to the leaders, the president, and the rank-and-file members of Congress allows for a broader range of interests to be articulated and consulted as the law-making function is performed.

Another value in the law-making function that can best be served by the leadership activism pattern is coherence of legislative program. This simply means that some order is apparent in the welter of proposals presented to Congress—both in terms of substance and in terms of timing. Necessarily, greater centralization of influence is more likely to

TABLE 2.—PATTERNS OF LEADER-COMMITTEE INTERACTIONS AND PARTICIPANTS' POTENTIAL FOR INFLUENCE IN LAWMAKING FOR DOMESTIC POLICY AND DOMESTIC ASPECTS OF FOREIGN POLICY

	Pattern of Interaction				
Participant	*Leader Activism*	*Mixed Mode: Personnel and Scheduling Focus*	*Mixed Mode: Personnel Focus*	*Mixed Mode: Scheduling Focus*	*Committee Autonomy*
President and Institutional Presidency	High Influence	Moderate to High Influence	Moderate Influence	Moderate to Low Influence	Low Influence
Subgovernments (key committee members, bureaucrats, lobbyists)	Moderate Influence	Moderate to High Influence	Moderate to High Influence	High Influence	High Influence
Party Leaders	High Influence	Moderate to High Influence	Moderate Influence	Moderate to Low Influence	Low Influence
Individual Members	Moderate Influence	Moderate to Low Influence	Moderate to Low Influence	Low Influence	Low Influence

1692

result in increased coherence than greater decentralization of influence. The leadership activism pattern leaves room for an activist president, but in no way places Congress in a subordinate position to the president. It simultaneously affords maximum influence for the party leaders and also all members. In addition it puts some restrictions on the influence of the members of the issue-specific subgovernments. If the program is set—both in substance and in timing—by these subgovernments, then little relationship will be seen between programs that are in fact competing for scarce resources. In the leader activism pattern the centralizing forces can spell out those relationships so that the decisions can be made on the basis of more information rather than less and there is a chance for greater coherence of all legislative results considered together.

Lawmaking for Non-domestic Aspects of Foreign Policy. The major difference between the foregoing situation and the situation when non-domestic aspects of foreign policy are at stake is the enormous impact of the president and institutional presidency. Presidential access to Congress is no longer as much of a problem for the president except on those occasions when he needs a treaty ratified or a new program approved. He may have more access problems in relation to appropriations requests. Another major difference is that interest groups play only a very limited role. Thus the chief actors in this policy arena are the president and institutional presidency, the foreign policy bureaucracy, key committee members principally on the Foreign Relations, Foreign Affairs, and two Appropriations Committees, the party leaders, and the individual members of the House and Senate.

The foreign policy bureaucracy-senior committee member alliance may have considerable influence on the routine aspects of foreign policy, particularly when a pattern of committee autonomy exists. Such an alliance may even form limits on presidential influence on such matters, although it seems as if the alliance is much less close between the foreign policy bureaucrats and committees and subcommittees than it is in many domestic areas and in the domestic aspects of foreign policy. And, in some ways, the major subgovernment in foreign policy may consist of the presidency and foreign policy bureaucracy united against *all* congressional elements, including the key committee and subcommittee members.

In a pattern of leader activism the leaders increase their potential for influence in the foreign policy arena and can also enhance the potential for influence on the part of members of the two chambers not on the specific committees dealing with central foreign policy issues by serving as their spokesmen and by helping them aggregate their positions. It also seems likely that in the event of a major disagreement between a committee and the president the committee itself will have a stronger hand if backed by at least some of the central party leaders—especially if they are from both parties. Thus leader activism does not necessarily diminish the potential for influence on the part of committees except perhaps in some of the routine matters that are left mostly to the interactions of committees and subcommittees and the foreign policy bureaucracy. The difference is that in domestic policy and the domestic aspects of foreign policy these routine matters, when aggregated, constitute the bulk of policy both in amount and importance. But in the foreign policy arena itself the routine matters are not as important.

Table 3 presents impressionistic judgments about the various actors' potential for influence on foreign policy under a pattern of leader activism and under a pattern of committee autonomy.

One note needs to be added about partisanship. Leader activism does not necessarily mean an increase in partisanship. Naturally, there will probably be less inclination on the part of the leaders of the president's party to intervene in support of a position inimical to the president. But on those matters on which it seems important to Congress as an institution to assert itself there may well be bipartisan cooperation between leaders of both parties both to bolster committee stances in partial opposition to the president and to take their own similar stances. Leader activism still leaves room for bipartisan cooperation in support of the presidency when an initiative is favored. Here, occasionally, the party leaders may serve as moderating influences on potential hostility in the committees. But this does not mean that they will merely become additional sources of pressure in control of the president and his advisers. Rather the leaders are left

TABLE 3.—PATTERNS OF LEADER-COMMITTEE INTERACTIONS AND POTENTIAL FOR INFLUENCE IN LAWMAKING FOR FOREIGN POLICY

	Pattern of Interaction	
Participant	*Leader Activism*	*Committee Autonomy*
President and Institutional Presidency	High influence (but subject to effective challenge)	High influence (relatively free from effective challenge)
Foreign Policy Bureaucracy	Moderate influence	Moderate influence
Key Committee and Subcommittee Members	Moderate influence	Moderate to low influence
Party Leaders	Moderate influence	Low influence
Individual Members	Moderate influence	Low influence

1694

with a genuinely independent stance and can choose which position to take in the event of disagreement or conflict. And, if some of that conflict appears to be partisan, that is not necessarily destructive. [I think the *"water's edge" doctrine* about partisanship in foreign policy has often served to mute justified critical reaction to presidential proposals and has, in general, operated to the detriment of Congress as an institution in the foreign policy arena.]

Oversight. The leader activism pattern contributes more to the potential for congressional oversight than the committee autonomy pattern. Since the latter pattern leaves the subgovernments in both domestic and foreign policy largely undisturbed to pursue their own rather narrow policy ends and conceptions of policy, oversight much of the time is a moot point. On the other hand, if the subgovernments face some constraints, the committee members become more independent of their bureaucratic counterparts and are more willing to ask hard questions of them.

There is the danger, of course, that if activist leaders are simply the handmaidens of the president that they will not themselves encourage vigorous oversight for fear of embarrassing that president's administration. Thus, in order for the leader activism model to promote vigorous oversight, the leaders, even those of the president's party, also have to be independent of the president, although not necessarily hostile to him and his policies.

The mixed mode patterns, particularly those in which committee assignments are open to a relatively large degree of leader influence, offer some potential support for vigorous oversight. Focus on scheduling alone is not very likely to help promote oversight.

Senate-House Differences

The potential impact of strengthening the party leaders at the very general level has now been sketched in comparison to the impacts of other distributions of influence. Before turning more explicitly to specific measures that might strengthen the hands of the party leaders in the foreign policy arena we need to note two important differences between the House and the Senate.

First, party and party leaders are usually more important in the House than in the Senate. This is in part because the greater size of the House necessitates a more elaborate apparatus to effect control and orderliness. It is also because most House members are particularly desirous of gaining reputations as good legislators and the party leaders can play an important part in either helping or hindering them as they seek to earn that reputation. Many senators do not focus—at least exclusively—on their role as legislators within the Senate. Rather, they may be playing to a more public audience and so the potential importance of the party leaders to the development of their careers is reduced.

Second, the constitutionally prescribed difference between the two chambers that gives the Senate a special role in foreign policy and gives the House a special role in taxing (and, by custom, in appropriations too) has a number of specific consequences: the party leaders in the Senate are generally more interested in and informed about foreign affairs than the party leaders in the House; the rank-and-file senators are also generally more interested in and informed about foreign affairs than the rank-and-file representatives; the Foreign Relations Committee is a more respected and desired committee in the Senate than is the Foreign Affairs Committee in the House; and the Appropriations Committee (and particularly its subcommittees) is accorded more deference in the House than is the Senate Appropriations Committee.

These two differences push in opposite ways. The potential for impact by the party leaders in the House is enhanced by their general importance in that body but is inhibited by the generally lower salience of foreign policy in the House. The potential for impact on the part of the Senate party leaders is enhanced by the salience of foreign policy to them and to most senators but it is inhibited by the general limits on party leaders in the Senate.

Strengthening the Party Leaders

As with the aggressiveness of Congress in the foreign policy arena in general, it is also true that the "strength" of party leaders is in large part a matter of will and only partially dependent on formal rules and institutional arrangements. Different leaders have proceeded in quite widely varying ways with essentially the same resource base. But, beyond exhorting leaders to be aggressive, the outside analyst is limited mainly to commenting on more formal arrangements.

I hope it is evident by now that I think that the leader activism model of leader-committee interaction is likely to be the most productive one in enhancing collective congressional influence on both the domestic and non-domestic aspects of foreign policy. The following suggestions are aimed at helping the House and Senate work toward a model of leadership activism:

1. The Majority Leader and Minority Leader should serve on the foreign policy committees. This is already true in the Senate where both Senators Mansfield and Scott hold membership on the Foreign Relations Committee. Their successors should also hold such memberships. In the House the floor leaders hold no committee

1695

assignments. If they were to be added to the membership of the Foreign Affairs Committee this would allow them to monitor and participate in decisions and to increase their own personal expertise in foreign policy matters. This would also be an important symbol that the House leaders take foreign policy very seriously. Such a symbol is particularly appropriate given the war powers bill passed fall 1973 and other signs of a general congressional desire to increase the foreign policy influence of the institution.

2. The party leaders in both houses should schedule party caucuses or conferences expressly to discuss foreign policy matters. This would help increase the level of information on such matters for all members and would be another symbol of widespread congressional interest. These meetings could also result in positions being taken by the parties, as was the case in an important House Democratic Caucus held a few years ago in connection with a resolution on Cambodia. The leaders should guide the caucus or conference meetings toward taking positions where they think a position wise both substantively and also in terms of supporting collective congressional impact on foreign policy.

3. The leaders should take personal interest in the assignment of members to the Foreign Relations and Foreign Affairs Committees. They should use their influence to encourage qualified men and women to seek seats on these committees and to encourage the various party committees on committees to make appropriate selections.

4. The leaders should be particularly aware of pending Appropriations Committee actions with an impact on foreign policy and should be willing to take an interventionist stance with the members of those committees if they see decisions they think unwise about to emerge.

5. The leaders should support the integrity of the jurisdiction of the Foreign Relations and Foreign Affairs Committees. Hopefully, the adoption of an expanded jurisdiction for the House Foreign Affairs Committee (in line with the Bolling Committee recommendations) will ease the problems there. In both houses there will inevitably be the potential for jurisdictional disputes because the boundaries between various committees can never be drawn so tightly as to prevent overlapping, much of which is legitimate. The leaders should intervene to prevent threatened loss of jurisdiction on the part of the foreign policy committees. On some issues referral simultaneously to two or more committees is an option that should be open to the leaders. This is already the case in the Senate and the system seems to work quite well. The Bolling Committee's report proposes a number of innovative steps for the House that would allow the Speaker to refer legislation to more than one committee, to split legislation for referral to several committees simultaneously, and to refer legislation sequentially to several committees. It also proposes allowing the Speaker to constitute *ad hoc* committees made up of members from several different committees having jurisdiction over the same bill.

6. The leaders should not hesitate to use their influence to seek to replace the chairman or ranking minority member of Foreign Relations or Foreign Affairs (or any other committee, for that matter) in the party caucus or conference if they think the incumbent is a bad representative of Congress and of the party. The mechanisms for such replacement are already present in the two parties in the House. Similar mechanisms should be established in the Senate. Even if these mechanisms are never used, their existence alone may well help to channel the behavior of committee chairmen and ranking minority members in ways more congenial both to the party leaders and to the rank-and-file senators and representatives.

7. The various party policy committees in the House and Senate (and all four have some version of such a committee) should be encouraged by the leaders to discuss and take positions on foreign policy issues.

8. The party leaders should be well enough informed that they can take leading parts in foreign policy debates on the floor of the House and the Senate. And the leaders should routinely take such a part. This often happens in the Senate at present, but is a less frequent occurence in the House.

The Impact of Strengthened Leaders

Even if all of the above suggestions were adopted immediately and wholeheartedly the millennium in terms of maximizing congressional impact on foreign policy would not have arrived. For both constitutional and practical reasons the president and the executive branch will always have the preponderant influence on foreign policy. And tension between the executive branch and Congress on foreign policy issues, as on many other issues, will recur. But the above suggestions, coupled with steady resolve on the part of members of both houses, should help redress the balance somewhat. There is no "golden age" of congressional influence to which I am seeking a return—"golden ages" are usually mythical creations found in the rhetoric of the least informed academics, journalists, and members of Congress alike. But the values of having the most public institution in the nation—Con-

1696

gress—heavily involved in foreign policy questions and of having some institutional means of checking presidential errors in judgment can be sought without pretending a return to a non-existent "golden age."

If the spectrum of congressional involvement in policy-making in general ranges from congressional dominance at one end to executive dominance at the other end, with joint program development at about the mid-point, then it would be fair to say that in foreign policy the congressional dominance pattern is likely to occur only on rare occasions. But my own values are such that I think the country will be better served by putting Congress in a position to insist on joint program development in a number of areas of foreign policy rather than routinely acquiescing to executive dominance. And I think that strengthening the party leaders in the foreign policy arena in the ways I have suggested will contribute to that development.

1647

Foreign Economic Policymaking

Senator James B. Pearson
April 1974

I have been asked to discuss Congressional organization with respect to foreign economic and agricultural policy and to evaluate the capability of Congress to participate in the formulation and oversight of that policy.

The Commission's consideration of this subject is particularly timely. Events in recent months have demonstrated that international economic issues can quickly and directly affect the American people. The Russian grain sales, devaluation of the dollar, and OPEC oil prices increases are obvious cases in point.

But these events are only the most visible evidence of the growing economic interdependence of national economies. Clearly, distinctions between domestic economic policy and foreign economic policy are rapidly diminishing.

When world economic conditions quickly and directly affect constituents' interests, members of Congress may no longer be content to consign decisions on international economic policy to a few economists and trade specialists downtown. Politics may dictate that the Congress become actively involved in international economic questions.

The Congress has a broad constitutional mandate in international trade and financial affairs. It can legislate in great detail and in virtually every area of foreign economic policy. The Congress could, for example, direct U.S. representatives on the boards of international financial institutions to follow certain policies. It could write detailed and narrowly circumscribed trade legislation instead of the broad negotiating authority contained in recent trade bills. Only the wisdom, not the authority of Congress would be questioned.

While we cannot definitively project the extent to which the Congress will choose to exercise its mandate in international economic and agricultural affairs, we can say that increased Congressional responsibility in this field raises fundamental organizational questions of particular interest to this Commission.

The first fundamental question concerns the organization of the Congress itself. Can the current committee structure meet the needs of a Congress more deeply and responsibly involved in the development and oversight of international economic and agricultural policy?

A substantial body of expert opinion holds that today's rather fragmented structure of committee responsibility and jurisdiction would constitute a barrier to increased Congressional participation in economic policy. Many believe that today's organizational arrangements, like Topsy, "just growed" and that they bear little relationship to the needs of a Congress attempting to become more active in economic affairs.

For example, in the House, the Committee on Ways and Means, a tax writing Committee, has sole jurisdiction over Trade legislation with all of its impact on foreign policy. Yet, the Foreign Affairs Committee has no legislative jurisdiction over international economic or agricultural issues except foreign aid—and it shares foreign aid with at least two other legislative Committees—Banking and Currency and Agriculture. The same basic arrangements prevail in the Senate.

The Commission may wish to consider whether the Congress should modify jurisdictional boundaries or develop new committees, perhaps joint committees, to deal with economic affairs.

The second fundamental question posed by an increase in Congressional involvement in international economic and agricultural policy concerns the capacity of the Congress to gather, analyze, and disseminate information needed to make well informed decisions on complex economic issues.

I would submit that international economic policy is no more arcane or complex than other issues for which the Congress is responsible. Atomic energy, strategic weapons, and energy policy come immediately to mind. Yet, today, the Congress does not have extensive support facilities in international economic affairs.

1698

Committees concerned with economic policy may require larger and more expert staffs. The services of the Library of Congress and the General Accounting Office may be expanded and improved. And some have suggested that Congress create its own council of economic advisors—a professionally staffed Foreign Economic Policy Board independent of the Executive Branch and responsible to Congress. Each of these suggestions may be worthy of the Commission's consideration.

I have outlined some basic organizational questions confronting the Congress and this Commission. The issues before us are both complex and important.

1699

Congress and Foreign Policy

Senator J. W. Fulbright
July 1974

It would be illusory to suppose that the momentary weakening of the President by the Watergate affairs signals a restoration of atrophied Congressional authority, either in foreign or domestic affairs. I believe this to be true for the following reasons:

First, Mr. Nixon's difficulties have not in fact precipitated a Congressional resurgence but rather have resulted in a diffusion of power among others within the executive branch.

Second, the very bitterness of disillusionment with the President, at least on the part of the opinion molders in the media and elsewhere, suggests that the same attitude which fostered excessive Presidential power in the first place is still very much with us—the attitude that the President is, or ought to be, an object of adulation. The obverse of the coin of reviling our leaders is worshiping them. This being so, I am inclined to wonder whether, instead of questioning the merits of the President as man-on-horseback, we are not merely awaiting a new man-on-horseback to occupy the pedestal from which Mr. Nixon has fallen.

Third, although it is said that power abhors a vacuum, more than a vacuum is required to inspirit an inert institution. If Congress is to recover and exercise its proper constitutional authority in foreign affairs, and to do so in a responsible, coherent and continuing fashion, positive acts of assertion are required. The adoption of the War Powers Act and the probable adoption of the Congressional Budget Act are promising moves toward the restoration of constitutional balance, but it remains in doubt whether Congress is prepared to assert its authority over the military and the CIA, over special interest groups and over the next charismatic figure to be implanted in the White House. Watergate, in short is not the *deus ex machina* from which a responsible Congress will emerge.

I. The Decline of Congress

There is no great mystery in the inclination of executives to override legislatures whenever they can get away with it. The real puzzle is the frequency with which legislative bodies acquiesce tamely in the loss of their own authority. All over the world constitutional government is in decline. Experiments in democratic government have been abandoned in much of Asia, Africa and Latin America, and even in Europe. Dictatorship is now the dominant form of government in the world, not only in Communist countries but in a very large part of what we call the "free world." In most of these countries parliamentary bodies of one kind or another have been retained for decorative and ceremonial purposes, but they are without power or real influence; their function is to "cooperate." In many cases, their loss of authority came about with their own cooperation, enlisted as a seeming necessity in time of national emergency.

The genius of the American Constitution is that it does not compel us to rely on the conscience and principles of our Presidents to protect us from dictatorship. Through the separation of powers and the federal system, our Constitution provided countervailing institutions with countervailing powers to protect us against the danger of executive usurpation. If our Presidents are men of conscience and principle, that is all to the good, but it is not something you can count on. Under our Constitution we do not have to rely on such good fortune for the protection of our liberties—as long as the countervailing institutions, which is to say, Congress, the courts and the state governments, exercise their countervailing powers. The contingency that the Founding Fathers could not have foreseen —and could not have done anything about if they had—was that one or more of the other institutions of government would cease to exercise and cease to defend their own authority against executive incursions.

That, however, is exactly what Congress let happen in the field of foreign relations, most recently and especially in the tame acceptance for so long a time of the Presidential war in Indochina. Out of a well-intended but misconceived notion of what patriotism and responsibility require in a time of world crisis, Congress permitted the President to

1700

take over the two vital foreign policy powers which the Constitution vested in Congress: the power to initiate war and the Senate's power to consent or withhold consent from significant foreign commitments. So completely were these two powers taken over by the President that it is no exaggeration to say that until quite recently at least, the United States appeared to be joining the global mainstream, becoming, for purposes of foreign policy, a Presidential dictatorship.

Long before the United States withdrew its forces from Indochina, a majority of members of Congress had become convinced that our involvement in Indochina was a disastrous mistake and that it should be liquidated. And despite the erosion of its war and treaty powers, Congress had the means, through its control of appropriations, to compel an early or immediate end to the war. Nonetheless, until the final stage Congress acquiesced in virtually every major Presidential action in the long war. A majority may have wished to end the war, but less than a majority of the two Houses were willing to take the responsibility for ending it. The legislature, which does not hesitate to defeat or override the executive on domestic legislation or to reject a Supreme Court nominee, reverts to a kind of tribal loyalty to the "chief" when war is involved, even though, in our system, of all functions of state war is the one which the framers of our Constitution were most determined to place under the control of the legislature. It was not a lack of power which prevented the Congress from ending the war in Indochina but a lack of will.

It is not my purpose to belabor issues now mercifully laid to rest but only to emphasize a point which I consider central: that it has not been a lack of available power which has undermined Congressional authority in foreign affairs but a lack of willingness to assert authority, make decisions, and accept responsibility for their consequences. Further, I am convinced that, whatever useful reforms are made in the organization and procedures of Congress, all the streamlining in the world will be no substitute for the character and backbone of the members.

The cause of the constitutional imbalance, by and large, has been crisis. Perspective is easily lost in time of crisis: you do what you think you have to do to meet a threat or an imagined threat or seize an opportunity—with little regard for procedure or precedent. Ends give way to means, law is subordinated to policy, in an atmosphere of urgency, real or contrived. In 1940 and 1941 President Roosevelt took over both the treaty power of the Senate and the war power of the Congress, not because he wished to set himself up as a dictator but because he judged the nation to be endangered by Germany and Japan—as indeed it was—and he needed to act in a hurry. In 1950 President Truman committed the country, for the first time in its history, to a full-scale war without the benefit of Congressional authorization; he did not do that because he wished to usurp the authority of Congress but because he perceived a clear and present danger in Korea and he needed to act in a hurry. In 1964 President Johnson subverted the Congress by persuading it, on the basis of erroneous information, to adopt the Gulf of Tonkin Resolution, which he invoked later to justify his massive intervention in Vietnam. President Johnson too was in a hurry; he said that he needed an immediate and overwhelming expression of Congressional support and, to our own subsequent regret, we gave it to him.

These occurrences have one common attribute: the subordination of constitutional process to political expediency in an atmosphere of urgency and seeming danger, resulting in each case in an expansion of Presidential power at the expense of Congress. The fact that Roosevelt and Truman were substantially correct in their assessment of the national interest in no way diminishes the banefulness of the precedents they set. Roosevelt's deviousness in a worthy cause made it much easier for Presidents Johnson and Nixon to practice the same kind of deviousness in a mistaken cause.

Only if one subscribes to the cult of the "strong" Presidency which mesmerized American political science in the fifties and early sixties can one look with complacency on the growth of Presidential dictatorship in foreign affairs. In those days, when the magic glow of Roosevelt still flickered in our memories, when Eisenhower reigned with paternal benignancy and the Kennedys appeared on white chargers with promises of Camelot, it was possible to forget the wisdom of the Founding Fathers, who had taught us to mistrust power, to check it and balance it, and never to yield up the means of thwarting it. Now, after bitter experience, we are having to learn all over again what those pre-Freudian students of human nature who framed the American Constitution understood well: that no single man or institution can ever be counted upon as a reliable or predictable repository of wisdom and benevolence; that the possession of great power can impair a man's judgment and cloud his perception of reality; and that our only protection against the misuse of power is the institutionalized interaction of a diversity of politically independent opinions. In this constitutional frame of reference, a good executive is not one who strengthens his own office by exercising his powers to the legal utmost and beyond, but one who, by respecting the limits of his own authority, contributes to the vitality of the constitutional system as a whole.

Executives, however, cannot—and probably should not—be relied upon to curb their own authority. That is essentially Congress's job, but Congress has not been doing it, and that, I should think, is the major reason for the low esteem in which

170

Congress is held, with ratings in the public opinion polls as low as those of the President in the wake of Watergate. Deserved though it may be, I regret very much this attitude toward Congress, not only because I believe that the Presidency has become a dangerously powerful office, more urgently in need for reform than any other institution of American government, but even more because, for all its failures and frailties, Congress remains the institutional centerpiece of our democracy. Whatever may be said against Congress—that it is slow, obstreperous, inefficient or behind the times—there is one thing to be said for it: it poses no threat to the liberties of the American people. The size and diversity of legislative bodies in general prevent them from working their unchecked will; indeed they have no single will to enforce. To the best of my knowledge, no elected legislative body has ever established its *own* dictatorship over a population.

The major virtue of legislatures is neither wisdom nor prescience—and certainly not "charisma" —but the basic inability to threaten the liberties of the people. The ancient Egyptians spent themselves into penury to give their mummified Pharaohs glorious send-offs to heaven; humble folk were rewarded by vicarious participation in the ascent. We in turn build great monuments to revere departed Presidents, perhaps for similar reasons. But who would dream of "mummifying" or deifying a legislature? The plodding, workaday character of Congress, its lack of glamor and mystery, its closeness to ordinary people with ordinary problems, even its much-reviled "parochialism," make of our national legislature an object entirely unsuitable for deification. That is why Congress is incapable of threatening our democratic liberties; that too is why an assertive, independent Congress is the first line of defense against an expanding executive, which can and does threaten our liberties.

II. National Commitments

The National Commitments Resolution, which I sponsored, and which was adopted by the Senate on June 25, 1969, by a vote of 70 to 16, affirmed the sense of the Senate "that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment."

The resolution employed the term "commitment" in two distinct meanings: "commitment" in the sense of assigning, employing or involving American military forces abroad; and "commitment" in the sense of contracting or obligating the United States to specified arrangements with foreign countries by means of treaties or executive agreements. In neither sense did the National Commitments Resolution have immediate tangible results. The Nixon Administration committed American military forces to Cambodia in 1970, and to Laos in 1971, without the consent or even the knowledge of Congress. Similarly, the Administration has continued to the present to enter significant contractual arrangements with foreign countries—not merely routine ones—by executive agreements unsupported by Congressional authorization. It became evident soon after the adoption of the National Commitments Resolution that the executive was not prepared to comply with Congressional affirmations of constitutional principle that do not carry the force of law.

The War Powers Act of 1973 was designed to remedy that difficulty with respect to "commitments" in the first sense, that is, the commitment of American forces to hostilities abroad. The Act has not yet been put to the test, and one hopes that it will not soon be tested. As adopted in November 1973 over the President's veto, however, the War Powers Act (P.L. 93–148) appears to be a strong and potentially effective legislative restraint on executive warmaking, combining, it seems to me, the best provisions of the previously divergent House and Senate bills.

While acting decisively on the war powers, Congress has done little to assert its responsibilities over "commitments" in the second sense, having to do with treaties and executive agreements. The Case Act of 1972 (P.L. 92–403) requiring the Secretary of State to submit all executive agreements to Congress for its *information*—but not for its approval or disapproval—is useful as far as it goes, but that is not very far. It is perhaps noteworthy that the Nixon Administration at first opposed this very limited measure which asserts no Congressional *authority* at all but only Congress's right to be informed. In due course the Administration dropped its opposition, in grudging recognition, it would seem, of the point made by the principal witness for the bill before the Foreign Relations Committee, that "this proposed measure is so limited in its scope, so inherently reasonable, so obviously needed, so mild and gentle in its demands, and so entirely unexceptionable that it should receive the unanimous approval of the Congress."[1]

During the same years that the war power has been passing out of the hands of Congress, there has also been a steady attrition of the status and

[1] "Transmittal of Executive Agreements to Congress," Report by Senate Committee on Foreign Relations, 1972, 92nd Cong., 2nd Sess., No. 92–591, p. 2.

1702

significance of treaties submitted to the Senate. The Constitutionally and historically sanctioned distinction between the treaty as the proper instrument for contracting important, substantive agreements and the executive agreement as an instrument for the conduct of routine and essentially nonpolitical business with foreign countries has now all but disappeared. The term "commitment" has come to be used to refer to engagements with foreign countries ranging from those contracted by treaties to those resulting from executive agreements, simple declarations and mere suppositions deriving from repeated, casual assertions. Simply by repeating again and again that we have an obligation to someone or other, we have come in a number of instances to suppose that our word and even our national honor are involved, as completely as they would be by duly ratified treaties.

The denigration of the Senate's treaty power has taken three forms: the contracting of significant obligations by executive agreements as well as through less formal processes of simple declaration; the interpretation of existing treaties in extravagant and unwarranted ways; and, on occasion, the revision of treaties approved by the Senate by subsequent executive agreements.

One of the more blatant examples of military commitment made by executive agreement—or, to give the executive the benefit of a small doubt, a virtual or potential military commitment—is the series of agreements providing for the maintenance of American military forces in Spain. The original executive agreement, concluded in 1953, stated that an attack on the joint Spanish-American facilities in Spain would be regarded as a "matter of common concern." The scope of the agreement was substantially expanded in 1963, when Secretary of State Rusk and the Spanish Foreign Minister signed a joint declaration asserting, among other things, that "a threat to either country, and to the joint facilities that each provides for the common defense, would be a matter of common concern to both countries, and each country would take such action as it may consider appropriate within the framework of its constitutional processes." The real significance of the arrangement with Spain was summed up accurately if indiscreetly in a memorandum written in late 1968 by General Wheeler, then Chairman of the Joint Chiefs of Staff. He pointed out that "By the presence of the United States forces in Spain the United States gives Spain a far more visible and credible security guarantee than any written document."

When the agreement came up for renewal in 1968, the Senate Foreign Relations Committee advised the executive that, in its view, "a military commitment to Spain could only be binding on the United States if it were the result of a treaty approved by the Senate." [2] Again, in a hearing held on July 24, 1970, the Foreign Relations Committee strongly urged the Administration to send the new agreement with Spain to the Senate in the form of a treaty or, in any event to make its terms known to the country through a public hearing of the Foreign Relations Committee. The Administration responded to the Committee's request by hastily summoning the Spanish Foreign Minister to Washington to sign the agreement before the Committee could press the matter further. The renewed agreement, signed on August 6, 1970, committed each country, among other things, to ". . . support the defense system of the other and make such contributions as are deemed necessary and appropriate to achieve the greatest possible effectiveness of those systems to meet possible contingencies. . . ." The agreement also established a Spanish-American "joint committee" on defense matters. Secretary Kissinger initialed in Madrid on July 9, 1974, still another renewal of this agreement, pledging as well that the two countries would "consolidate their defense cooperation" and continue "reciprocal support of their defensive efforts."

The Nixon Administration has insisted that the Spanish arrangement was not a "commitment;" and in December 1970 the Senate adopted a resolution expressing the sense of the Senate that nothing in the Spanish agreement "should be construed as a national commitment by the United States to defend Spain." All this is a kind of word game, in which it is affirmed, in effect, either that the President does not intend to do what he has said he would do, or that words do not mean what they say. The language of the agreement is vague, but regardless of disavowals, it is difficult to interpret it as anything but a military commitment to Spain.

The most pertinent recent example of treaty revision through extravagant interpretation is provided by SEATO. The SEATO treaty, according to a State Department paper issued in 1966, establishes as a matter of law that a Communist armed attack against South Vietnam endangers the peace and safety of the United States" and that the President has "the constitutional responsibility for determining what measures of defense are required when the peace and safety of the United States are endangered." [3] The executive branch thus asserted, in effect, that the treaty obligated us to make war in Vietnam and further gave the President full authority to initiate and conduct that war. This interpretation of SEATO was an extravagant reinterpretation

[2] "National Commitments," Report by Senate Committee on Foreign Relations, 1969, 91st Cong., 1st Sess., No. 91–129, p. 29.

[3] Leonard C. Meeker, The Legality of United States Participation in the Defense of Viet-Nam, (Washington: U.S. Department of State, March 4, 1966) p. 12.

170

of the treaty as it was contracted and ratified in 1954; all that the treaty as ratified obligated us to do was to "consult" with our allies in the event of internal subversion such as took place in South Vietnam and, in the event of an act of international aggression, to act to meet the "common danger" in accordance with our constitutional processes.

If indeed SEATO *had* authorized the President to make war at his discretion, as indeed it did not, the treaty could properly have been regarded as unconstitutional. The treatymaking power has been held by the Supreme Court not to extend "so far as to authorize what the Constitution forbids." [4] In its report on the war powers the Foreign Relations Committee commented that this limitation was properly construed "as preventing the President and the Senate from exercising by treaty a power vested elsewhere by the Constitution. The President and the Senate could not, for instance, use the treaty power to abridge the Bill of Rights; nor, in the Committee's view, can a treaty be used to abridge the war-declaring power, which is vested not in the Senate alone but in both Houses of Congress. The framers of the Constitution considered and rejected the possibility of vesting in the Senate alone the power to declare war. That power was deliberately vested in the Congress as a whole; a decision to initiate war must be made by both the Senate and the House of Representatives and cannot, therefore, be made by treaty." [5] This principle was affirmed by the War Powers Act, which states (in Sec. S(a) (2)) that authority to commit the armed forces shall not be inferred from any treaty unless that treaty is implemented by legislation specifically authorizing the use of the armed forces.

In addition to altering treaties by reinterpretation, the executive has on certain occasions gone so far as to alter treaties consented to by the Senate by subsequent executive agreement. If this can be done, it reduces the Senate's treaty power to a nullity. Of what significance is the Senate's authority to pass upon the terms of a treaty if the executive may subsequently alter those terms at will? A President who presumed to repeal a domestic law would be regarded as having executed a coup d'etat and might even be impeached, but in foreign affairs the practice is not only accepted but scarcely noted. In recent years there have been two particularly notable instances of this patently unconstitutional practice. Specific terms of both the Italian and Japanese peace treaties have been altered by executive agreements. In one case, the return of the Bonin Islands to Japan, the agreement was not submitted to the United States Senate, although it was made subject to approval by the Japanese Diet.

[4] *Geofrey v. Riggs*, 133 U.S. 258, 267 (1890).

[5] "War Powers," Report by Committee on Foreign Relations, 92nd Cong., 2nd Sess., No. 92-696, p. 21.

The provisions of the Italian peace treaty altered by executive agreement pertained to the limitations on Italy's armed forces and to the status of the city of Trieste. Italy was released from the military clauses of the treaty, as far as the United States was concerned, by the simple means of a communication from Secretary of State Dean Acheson to the Italian government on December 21, 1951. As to Trieste, Article 21 of the peace treaty terminated Italian sovereignty over the Free Territory of Trieste until such time as the United Nations Security Council established a permanent regime. When agreement on a permanent regime could not be reached, the United States joined with Italy, Yugoslavia and the United Kingdom in a "memorandum of understanding"—an executive agreement, that is—which divided the Free Territory of Trieste between Italy and Yugoslavia.

Article 3 of the Japanese peace treaty obligated Japan to "concur" in any proposal by the United States to place certain specified islands, including the Bonins and the Ryukyus (which include Okinawa), under a United Nations trusteeship with the United States as sole administering authority. Pending such arrangements, the treaty stated that "the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters." The treaty made no provision for the return of these islands to Japan. It seems quite clear that any initiatives to restore the designated islands to Japan, constituting as they did changes in the terms of the peace treaty as approved by the Senate, should have been submitted to the Senate as additional treaties. Nonetheless, on December 24, 1953, the Eisenhower Administration concluded an executive agreement with Japan relinquishing to Japan all rights of the United States with respect to the Amami Islands. The Bonin Islands were returned to Japan by another executive agreement, signed on April 5, 1968. This agreement, as already noted, specified that it would come into effect only after Japan had advised the United States that Japan "has approved the agreement in accordance with its legal procedures." No comparable reference was made to the legal procedures of the United States.

There have been other instances in which treaties have been altered or supplemented through agreements requiring legislative ratification by the other party but not by the United States. In August 1959, for example, the United States and other NATO countries concluded certain agreements supplementing the North Atlantic Treaty Status of Forces Agreement, which itself had been approved by the Senate. These supplementary agreements required "ratification or approval"; the other parties ratified but the United States simply approved. Similarly, an agreement of April 27, 1951, between the

1704

United States and Denmark, made "pursuant to the North Atlantic Treaty," and having to do with the defense of Greenland, was made subject to parliamentary approval by Denmark but not by the United States. A defense agreement "pursuant to the North Atlantic Treaty," concluded between the United States and Iceland on May 5, 1951, provided that the arrangement would come into force upon notification from Iceland of its ratification of the agreement, but ratification by the United States was not specified.

By ironic contrast, here are a few examples of the kinds of treaty revisions which *have* been submitted to the Senate for its advice and consent, as shown by a review of the Senate Foreign Relations Committee calendar: In 1951, the year the United States released Italy by executive agreement from the military restrictions of the Italian peace treaty, the Truman Administration did submit to the Senate a protocol prolonging the International Agreement Regarding the Regulation of Production and Marketing of Sugar. In 1953, the year in which the Eisenhower Administration by executive agreement relinquished to Japan American rights over the Amami Islands, the executive did submit to the Senate a convention modifying and supplementing a 1948 convention between the United States and Belgium for the avoidance of double taxation. In 1954, the year in which the Free Territory of Trieste was divided between Italy and Yugoslavia by a "memorandum of understanding," the executive did submit as treaties a protocol amending the slavery convention and a proposal to extend the double-taxation agreement with the Netherlands to the Netherlands Antilles. In 1968, the year in which the Bonin Islands were returned to Japan by executive agreement, the Johnson Administration submitted to the Senate for its advice and consent: a protocol with Mexico modifying an agreement between the two countries concerning radio broadcasting; six amendments to the International Convention for the Safety of Life at Sea; and a revision of certain international radio regulations adopted at Geneva in 1959. Instances such as the foregoing underlay the assertion of the Senate Foreign Relations Committee in the spring of 1969 that ". . . we have come close to reversing the traditional distinction between the treaty as the instrument of a major commitment and the executive agreement as the instrument of a minor one." [6]

As far as their substance is concerned, I personally approved of each of the revisions which were made in the Italian and Japanese peace treaties, and I favored, most strongly, the restoration of Okinawa to Japan, which was accomplished by a treaty, approved by the Senate in November 1971. The executive had hesitated for some time before making the decision to submit the Okinawa agreement as a treaty, apparently for fear of a controversy in the Senate over Japanese textile exports to the United States and possible defeat of the treaty, and also because the Japanese government expressed fear that a debate in the Diet on ratification would touch off violent anti-American riots. In order to spare ourselves and the Japanese these inconveniences, serious consideration was given to a procedure violating our own Constitution, the apparent underlying assumption being that whenever government officials are in more or less general agreement that some provision of the Constitution is obsolete, inconvenient, or detrimental to the smooth conduct of foreign policy, that provision of the Constitution can simply be set aside without benefit of a constitutional amendment.

The implications of the matter are enormous. What is at stake is nothing less than the treaty power of the Senate as that power is defined in the Constitution and in long-established constitutional usage. If the executive is to be conceded the right to alter the terms of treaties by his own declaration or by executive agreement, then the treaty power of the Senate will have been reduced to a nullity. It will be an exercise in futility for the Senate to study and debate the provisions of treaties before giving its consent if it knows that those provisions can be altered subsequently at the option of the executive. In the past it has been the practice of the Senate to consider the provisions and implications of treaties with care and deliberation; it has done so in the belief that a treaty consented to by the Senate was, as the Constitution itself provides, part of the "supreme law of the land." It is obvious that any law which can be altered or nullified at the will of the executive is not only not "the supreme law of the land"; it is no law at all.

What can Congress do to regulate executive agreements? The Case Act, as I have noted, is useful from the standpoint of providing Congress with necessary information, but nothing has yet been done to reassert Congress's advice and consent authority with respect to treaties. The Constitution makes no provision or reference to "executive agreements," although they have been tolerated in practice throughout our history, the accepted distinction being between politically significant agreements, which have been thought to require treaties, and matters of a nonpolitical or routine nature, which have been thought appropriate for executive agreements. Whatever the standing or legitimacy of executive agreements, there can be no question in any case of the authority of Congress to regulate or restrict them, not only as an assertion of the Senate's treaty power but in fulfillment of Article I, Section 8, which gives Congress the authority to make laws "necessary and proper" not only for the execution of its own powers but also for the execu-

[6] "National Commitments," p. 28.

1705

tion of "all other powers" vested by the Constitution "in the Government of the United States, or in any Department or Officer thereof."

This being the case, it would not seem necessary, even if Congress and the states were so disposed, to resort to a constitutional amendment like the Bricker proposal of 1954. A bill sponsored by Senator Ervin and others (S. 1472), which was approved by the Judiciary Committee's Subcommittee on the Separation of Powers in July 1973, would give Congress the power to veto by concurrent resolution of the two Houses executive agreements—other than those contracted pursuant to a specific provision of the Constitution, a treaty or a law—within sixty days of their submission, failing which action on the part of Congress the agreements would automatically go into force. In testimony before the Subcommittee supporting the bill, I suggested that, in Constitutional principle, it would be preferable to require Congressional approval of each agreement, but that as a practical matter, it would be exceedingly burdensome for Congress to act separately upon some 300 new executive agreements a year. I did strongly recommend, however, and still do recommend, that the Ervin bill be altered to allow *either* House to disapprove an executive agreement by simple resolution.

In any case, whether the veto be by simple or concurrent resolution, the Ervin approach seems to me a most desirable, effective, and practical means of regulating executive agreements, with the particular advantage that it does not require the drawing up of a necessarily vague and abstract legal definition of the difference between a "significant" and "routine" agreement, that being left to the judgment of Congress in each particular instance. Most unfortunately, the Ervin bill has been left unacted upon on the Judiciary Committee's agenda since July 1973.

A less direct but still worthwhile possible approach to the problem of executive agreements arose in connection with the submission to the Senate in 1972 of the Vienna Convention on the Law of Treaties, Article 46 of which provides that "a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance." The Foreign Relations Committee proposed the attachment to the Senate's advice and consent resolution of an "interpretation and understanding" affirming that "within the meaning of Article 46 of the Convention, Article 2, Section 2, of the United States Constitution, stating that the President 'shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur,' is a rule of internal law of the United States of fundamental importance."

One would have supposed that this unexceptionable understanding, affirming no more than a truism—that a provision of the Constitution is a "rule of internal law . . . of fundamental importance"—would have been accepted without question or controversy. Like the Ervin bill, the proposed understanding would not require Congressional approval of every executive agreement, but would simply reserve the Senate's right to contest the binding nature of any executive agreement which went beyond routine matters and intruded upon the substantive authority of the Senate. The executive, as well as other parties to the Convention, would be put on notice that the Senate *might* choose to contest the validity of an executive agreement as a violation of internal law.

The proposed understanding elicited the intense opposition of the State Department. In a letter dated January 31, 1974, the Assistant Secretary for Congressional Relations conceded that the advice and consent clause of the Constitution was a "rule of internal law of the United States of fundamental importance", but that is all he conceded. He went on to affirm—most significantly, it seems to me—that in the view of the executive branch "there is a very considerable difference between the use of the term 'treaty' in the Vienna Convention and the generally accepted use of that term in the internal law of the United States." In our own internal law, according to the State Department, any agreement contracted by the President, with or without the Senate's advice and consent, or other Congressional authorization, is a "treaty" as that term is used in international law.

If that is true, it would seem to me highly desirable to bring our own internal definition of a "treaty" into compliance with international usage. And in so doing, by restricting the use of executive agreements, we would also bring our practices in line with our own Constitution. As matters now stand, a treaty in the Constitutional sense is no more than one of a number of available means of contracting foreign agreement, and the choice of means is left almost exclusively to the President. In his discourse on international law Professor Charles Cheney Hyde notes that the advice and consent clause was not meant "to be rendered abortive by recourse to a different procedure for the use of which no provision was made. . . . Otherwise, the scheme for the cooperative action of the President and the Senate would have been a relatively valueless injunction, and the solitary constitutional guide for contracting would have been of slight worth."

———

1706

In conclusion I would like to stress my strongly held view that there is nothing basically wrong with Congress as an institution. Congress, like the Presidency, is as sound and strong as the members who compose it. If there is anything wrong with Congress, it is not its rules, procedures or organization, but the lack of will to use these in an effective and responsible way. There is no lack of opportunity or of authority in the United States Congress, only a lack of backbone. Too many members have been responsive to pressures from the White House, from organized interest groups, or from the latest poll. No amount of procedural reform is going to correct that. The only things that can make of the Congress the great institution our Founding Fathers intended it to be are the wisdom, character and good judgment of its members. If these qualities are present, there will be no insuperable difficulties about reclaiming the war and treaty powers, or overseeing the Pentagon and the CIA; if they are not present, the best organizational blueprint in the world can never be anything more than that. Congress does not need new rules or procedures nearly so much as it needs legislators of character and judgment, Senators and Congressmen who will stand up for their own convictions even when these require going against the pressures of the White House or the latest poll.

I am not much given to quoting my own past speeches, but I would like to finish with a few words from a speech I made back in 1946, soon after I came to the Senate, because it expresses a conviction about the Congress which I still hold. "The legislator," I said at that time, "is an indispensable guardian of our freedom. It is true that great executives have played a powerful role in the development of civilization, but such leaders appear sporadically, by chance. They do not always appear when they are most needed. The great executives have given inspiration and push to the advancement of human society, but it is the legislator who has given stability and continuity to that slow and painful progress. . . . Many Americans are impatient at the lack of vision and initiative of the Congress, but they should not forget that it is the Congress that stands between their liberties and the voracious instinct for power of the executive bureaucracy."

1707

Public Participation in the Foreign Policy Process

Richard A. Frank*
September 1973

"If our foreign policy is to be truly national, we must deepen our partnership with the American people . . . We must listen to the hopes and aspirations of our countrymen. I plan, therefore, on a regular basis, to elicit the views of America's opinion leaders and to share our perspectives freely."

Secretary of State
HENRY KISSINGER
September 7, 1973**

The United States has experienced during the last dozen years an extraordinary upsurge of activity aimed at expanding, making more efficient, and institutionalizing the direct participation of private individuals or segments of the public in the formulation and execution of policy within the organs of government. But this activity, perhaps with the exception of Vietnam, has been oriented toward domestic issues.

What of foreign policy? Is the country better served by exempting from citizen involvement decision making concerning matters with an international dimension? Are foreign relations necessarily vested with such different ingredients that they should or must be conducted by bureaucratic experts secretly, perhaps even without significant Congressional input? And, if some aspects of foreign affairs do lend themselves to a greater public role, which aspects are these and what suitable form should the involvement take?

This chapter summarizes the Panel's analysis and conclusions about public participation in the foreign policy process—a topic especially significant in an era when this country's foreign intercourse has now fully blossomed, when the limits of Executive power vis-a-vis individual rights and the prerogatives of Congress are being so often and thoroughly explored, and when thoughtful persons are pondering the means to remedy, and to avoid revisiting, the mistakes of the past—of Vietnam, international monetary instability, polluted oceans, a worldwide energy crisis, and famine.

Who is the Public?

The term "public" is vague. For the purposes of this analysis, the public means simply individuals or groups whose interests are affected by a given action. Those interests may be of various types. With respect to a general political matter, *e.g.*, overall relations with the Soviet Union, or a war and peace issue like Vietnam, most members of the public would have more or less an undifferentiated concern in international peace and stability or in how their country protects its security, whether it behaves militantly or violates human rights and international law, and what priorities it selects for the expenditure of funds. Yet, at the same time, some will have a narrower interest if they may be drafted for military service or if their business will benefit handsomely from a military venture. In the area of trade, or international communications and transportation, the interest will often tend to be more easily pinpointed, with various segments like industry, labor, and consumers promoting the adoption of certain policies having specific financial impact. Persons with either undifferentiated or more unique or specific interest are here included within the rubric "the public", recognizing that whether a particular type of in-

*This paper, together with the material of John Murphy, Stanley Futterman, Rita Hauser, and Taylor Reveley, is one result of a discussion group sponsored during 1973–74 by the American Society of International Law, and chaired by Dean Francis O. Wilcox. The proceedings of the study group will be published soon as *The Constitution and the Conduct of Foreign Policy* (Praeger Publishing Co.: Forthcoming), edited by F. O. Wilcox and Richard A. Frank.

**"Hearings on Nomination of Henry A. Kissinger to be Secretary of State Before the Senate Committee on Foreign Relations," 93rd Cong., 1st Sess., pt. 1, at 10 (1973).

1709

volvement in decision making is possible or appropriate may depend on the nature of the interest.

Some have suggested that allowing the public, as interpreted above, to partake in the mechanisms of government opens floodgates and creates an unmanageable process. The Panel does not agree. Virtually all public segments or viewpoints do or can have representatives or spokesmen, thus limiting the numbers who will ask to be heard. If the public now participates on an analogous domestic issue without rendering inefficient the decision making process, it should be able to be similarly involved in foreign affairs.

Public segments with a financial interest that is both concentrated and sizeable, like big industry and unions, now have a significantly better opportunity of participating than segments whose interests tend to be sizeable but diffuse (*e.g.*, consumers or those concerned about human rights) or concentrated but small (*e.g.*, an individual). The Panel, when it refers to the public, includes all of these elements, but believes that particular concern should be addressed to remedying the above imbalance, and to providing an opportunity for more involvement for segments of the public whose access is now limited because of absence of traditional political "clout", *i.e.*, the ability to generate campaign contributions or votes.

The Nature of Participation

The Constitutionally guaranteed role for the citizen is through the electoral process and the delegation of authority to public officials which it establishes. The issue of concern here is more direct and pointed participation, the taking of specific, formal steps to influence the government's future course of action on a particular topic, and the acquiring of information about past or future government policy or actions. These are often related—acquiring information being a frequent condition precedent to effective action—but they need not be. The public may already have the information it wants and thus simply wish a means of exerting influence. Acquiring information may be wanted or useful only so that the public can pass judgment on policy in the broadest sense through voting or polls or letters. Often the same vehicle, *e.g.*, hearings, both imparts information and provides the opportunity to influence.

Participation in the decision making process can be directed at either of the two branches having major foreign affairs responsibilities, the Executive or the Congress. One threshhold question is whether the citizenry's efforts at increasing its participation should be addressed primarily at one or the other of these organs of government. One would argue in favor of a Congressional focus on the grounds that the legislature will be more receptive to public input and that policy can be effectively influenced only by a combination of added citizen pressure on Congress, and a new, strengthened role of Congress. Others believe that the President will continue to be the dominant factor in foreign relations, that the decisions most lacking institutionalized public input are those taken by the Executive under its inherent power or broad, delegated authority, and that the cross-currents in Congress and its historical intimacy with pressure groups hardly make it a more impartial or better maker of foreign policy. Regardless of emphasis, improvement is needed in the processes of both forums.

The American Presidency now plays the predominant role in the making and execution of foreign policy, and a related issue is the propriety of the present distribution of foreign affairs powers. This is relevant to public involvement, for if it is shown that the public can play a greater role in Congressional, than in Executive decision making, the existing preeminence of the Presidency constitutes a structural disability to that involvement, and increasing Congressional power would broaden the scope and effectiveness of the public's role. Furthermore, the very fact that authority is shared between two branches and that an institution with as many politically independent persons as Congress is one of these would perforce result in larger amounts of information being released and more open debate. The distribution between these organs is also germane if one concludes the public cannot at all directly have a substantial input in foreign affairs decision making. In that case, the need for checks and balances becomes even more compelling, and the public should be granted the opportunity to influence policy indirectly, not only through an elected President, but also through an elected Congress.

While the Panel believes, *inter alia* for the above reasons, that Congress must play a broader role in foreign affairs decision making, the focus of our inquiry here is public input into each branch rather than the division between branches. The latter subject is discussed in other chapters on the power to wage war and on international agreements, and is again referred to below in the discussion concerning the Congress.

A further question is whether the third branch of government, the Judiciary, should provide more access to citizens when they contest foreign policy decisions made by the Executive and/or Congress.

1709

The federal courts have shown certain deference and have adhered to special rules when a matter subject to litigation has a nexus to foreign affairs. They have adopted a doctrine that the Congress may more broadly delegate in the international area, and they have shown a tendency not to review Executive decisions merely because they relate to foreign relations (and especially if they emanate from the President's inherent authority), even if similar judgments in the domestic area would be subject to judicial scrutiny for substantive arbitrariness or procedural irregularity. The Supreme Court explained the reasons for this when it eschewed responsibility to adjudicate the legality of a Presidential grant of an international airline permit in 1948 in the oft-cited case, *Chicago and Southern Airlines* v. *Waterman:* [1]

> "It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. But even if the courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. . . . They are delicate, complex, and involve large amounts of prophecy. They are decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

Later, in *Baker* v. *Carr* [2], when the Supreme Court took the bold step of assuming jurisdiction over apportionment, it articulated a more balanced approach:

> "Yet it is error to suppose that every case or controversy which touches on foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed . . . of its susceptibility to judicial handling. . . ."

Foreign policy should not be made by the courts, but then neither is it the judiciary which is responsible for making domestic policy. Many foreign policy issues, like many domestic issues, may not be justiciable. On the other hand, the courts should not decline to review whether proper procedures were followed or whether an action is arbitrary, outside the scope of an authorizing statute, or unconstitutional merely because it involves foreign relations. The party asking the court not to review should bear the burden of showing why, in the specific case, court scrutiny is inappropriate. And, if claims are made that the required secrecy of material justifies unreviewability, the court should make an independent judgment of the correctness of the classification.

[1] 333 U.S. 103, 111 (1948).
[2] 369 U.S. 186, 211 (1962).

The Foreign Policy Process

The foreign policy process can be divided into a number of different categories, and the kind of participation that is most suitable may depend on the sort of action involved. For example, it could be argued that the nature of public participation should be different for legislative foreign policy making than for that of the Executive. Within the latter area, action pursuant to delegated authority may call for mechanisms unlike those used when the President's constitutional authority is being exercised. (One very practical difference is that Congress could direct that the Executive permit public participation when implementing delegated authority; if Congress attempted to do so in connection with the President's exercise of his inherent, exclusive powers, a constitutional conflict would, no doubt, ensue.) Actions can be categorized by subject matter; the role of the public may be quite different if the subject is an economic or social matter as opposed to being military or purely political. Such a division ultimately breaks down if the Executive, as has been its wont, claims that virtually all foreign affairs matters are "political" or "diplomatic" and thus sacrosanct. Lastly, subjects can be analyzed and divided functionally according to their specific and uniquely foreign affairs needs, for example into those which require secrecy or speed and those which do not. As noted below later, this latter means of distinction holds the greatest promise and should be explored more by the government.

The Balance That Must Be Weighed

In deciding whether public participation should be expanded, one must balance the reasons why, as a matter of policy; citizen involvement would be beneficial and, by contrast, the reasons that participation is often thought to be potentially harmful or impracticable. As a general proposition, we believe added public input will lead to wiser policy, more innovative because of the influx of outside ideas, sounder if the decision maker must openly debate and account for his judgments, and fairer when all elements comprising the rational interest have an opportunity to set forth their positions. It will result in policy more likely to be supported by a larger proportion of the citizenry (if due only to the catharsis of being consulted) and policy whose making increases rather than diminishes public confidence in the integrity and responsiveness of government. Finally, a democratic society rests on an assumption that individuals, to the extent possible, should be able to decide or be involved in deciding their own fate.

1710

The failure to permit or invite public involvement is usually justified on the grounds that participation is inconsistent with the requirements of secrecy, speed, and unity, and is ill-advised because the public is not equipped to deal with the complexities of foreign affairs problems. Although the Supreme Court, in *United States* v. *Curtiss-Wright Export Corp., et al.*,[3] was addressing the issue of delegation of authority, its 1936 decision is often cited by the Executive to explain why the making of foreign policy should not involve the public:

> "In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as the representative of the nation . . . [He] must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success. . . . The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch . . . He has his agents in the form of diplomats, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results . . ."

The Panel rejects the underlying assumption that foreign affairs involves a certain "mystique" that qualifies only the President and his chosen bureaucratic experts to deal with its complexities. Even if once true, this immodesty is today simply unfounded. Due, *inter alia,* to technological advances in communications, Americans have access to massive amounts of timely information, and, indeed, can visually monitor diplomatic events. While the public may, with good reason, be denied access to certain data because of its sensitivity, the willing citizen or group can become sufficiently versed by information that is or should be unclassified to make educated judgments about the essence of the great majority of foreign affairs problems. There is no dearth of highly knowledgeable foreign affairs experts and organizations or competent representatives of most public segments who could play a useful role in policy formulation. In sum, the United States Court of Appeals for the District of Columbia Circuit was correct when it recently said: "The time has long passed when the words 'foreign policy', uttered in hushed tones, can evoke a reverential silence from either a court or the man on the street." [4]

Similarly, we find unconvincing the argument (used frequently in an attempt to squelch anti-Viet Nam war sentiment) that unity of design is always a necessity. At minimum, on balance we conclude that the benefits from the country's leaders being aware of public views, especially when they conflict with administration policy, outweigh the negotiating benefits of unity, brought about, as in totalitarian government, by autocratic decision making.

While secrecy and speed do in some foreign affairs cases make public involvement inappropriate, we reject the concept implicit in *Curtiss-Wright* that foreign affairs, as a classification, is so distinguishable from domestic affairs that one broad rule regarding public participation should apply to one area and a different rule to the other. As the Department of State, itself, admits, there "is no longer any real distinction between 'domestic' and 'foreign' affairs . . ." [5] Or, as one eminent jurist has put it: "In our complex world there are very few purely internal affairs. Foreign problems cast their shadows on the domestic scene and internal events influence foreign policy." [6]

Ways to Increase Public Involvement

The Panel has examined the ways in which the public is allowed or not allowed to participate in specific aspects of the foreign affairs decision making process of the Executive branch and the Congress. The objective was to see whether the extent of permitted involvement has been adequate and, if not, to make recommendations for improvement.

The Executive Branch

Within the Executive branch, the opportunity for informal public input on foreign affairs matters tends to be similar to such input on domestic affairs. Individuals or groups are more or less readily provided the chance to meet with government officials, to present their case or viewpoints, and to debate the issues. However, variations in practice occur with respect to more formal procedures such as the dissemination of information, administrative proceedings, and advisory committees (including delegations).

The Disclosure of Information

The Freedom of Information Act [7] establishes the rule that government agencies should make all information available to the public upon demand.

[3] 299 U.S. 304, 319–20 (1936).

[4] *Pillai v. CAB,* Civil Action No. 73–1408 (D.C. Cir., decided August 22, 1973), 25 n. 34.

[5] "Our Foreign Policy", Department of State Pub. 3972, General Foreign Policy Series 26, September 1953 at 4. See also "How Foreign Policy is Made", Department of State Pub. 7707, General Foreign Policy Series 195, June 1971 at 8.

[6] *Briehl v. Dulles,* 248 F.2d 561, 591 (D.C. Cir. 1957) (Judge Bazelon dissenting).

[7] 5 U.S.C. §522 (1970).

17

This requirement, however, does not apply in nine enumerated categories, including "matters that are . . . specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy." [8] Executive Order 11652 of March 8, 1972 (which was advertised as an attempt to reduce the confidentiality sanctioned by its predecessor) makes confidential information concerning "national defense or the foreign relations of the United States" when disclosure would damage "national security." The Freedom of Information Act requires that the subject must both relate to foreign affairs and also be covered by executive order; however, Executive Order 11652 is so broad, as drafted and interpreted, that this dual qualification is rendered essentially meaningless.

The Freedom of Information Act is interpreted by the Executive according to the gospel of the diplomat. There is a presumption that everything smacking of foreign affairs should be held close to the chest.

Almost as meaningful as the amount and scope of information made public is the fashion in which it is packaged, conveyed, and portrayed, and the manner in which the public can seek refinement or clarification of ambiguity. Information is generally disseminated in speeches, hearings before Congress, "white" papers or a State of the World message, press releases, or press conferences (of the President, the Secretary of State, and lower level spokesmen, *e.g.*, the Department of State or the Department of Defense press officer). Some information is "leaked" by persons authorized to do so, and some by unauthorized sources.

The subject of information is dealt with in detail in the chapters on secrecy, and it is not therefore dwelled on here. However, because a free flow of information is a key to keeping the government honest, two points should be stressed. First, as so many others have pointed out, far too much information is withheld. Reasons for classification are often unjustified. One common explanation is that requirements for disclosure would prejudice our national interests by forcing the Executive prematurely to reveal fallback positions in international negotiations. No one would quarrel that fallbacks should not, as such, be made public, but the Executive could and should openly explore alternatives (most of which are often obvious) and their relative merits. Even in cases where information must be confidential before a negotiation, it should not be maintained in a secret status after the event. Second, it is imperative that the release of information should be accompanied by an opportunity for representatives of the public or the press (which is likely to be the public's most effective agent in the area) to pose questions and to engage in open debate of an adversary type. Public participation is not adequately enhanced only by the one-way street of more administration articulation of its philosophy, purposes, and actions. We recommend more Presidential press conferences but only if these are followed by the give and take of questioning. This exposure can have beneficial educational aspects not only for the public but also the President. Unless the President subjects himself to cross-examination, the press conference can become just another device for selling administration policy. Public television might be more often used as a forum where public representatives can argue foreign policy issues or confront high level decision-makers.

[8] 37 Fed. Reg. 5209 (1972).

Administrative Proceedings

Under the Administrative Procedure Act (the APA) [9] government agencies are required, in implementing law and policy, to follow specified rulemaking or adjudication procedures. An agency must give notice through the Federal Register or otherwise; describe the proposed rule and its underlying authority; give interested parties an opportunity to participate through submission of written views and, in some instances, an oral hearing; render a decision supported by a record; and state the basis and purpose of that decision. These procedural requirements do not apply "to the extent that there is involved a military or foreign affairs function of the United States." [10] The Department of State interprets this exclusion to exempt all of its substantive activities [11] since all of them to some extent have a nexus to foreign affairs. Consequently, the Department does not have generally applicable regulations prescribing these or similar procedures. When a particular matter arises, no examination is made whether the APA's public procedures, or even procedures specifically fashioned to take into account the peculiarities of foreign affairs, could or should be applied.

The Department of State recognized this deficiency when it stated in a recent circular [12] that "[h]eretofore, the Department has applied the 'foreign affairs function' exemption quite broadly and perhaps unnecessarily to some subjects." In the Circular, the following "new policy" was adopted:

> It has been determined that the Department will not avail itself to the full extent of its statutory

[9] 5 U.S.C. §551, *et seq.* (1970).

[10] *Id.* §553(a)(1), §554(a)(4)1.

[11] The Department does follow procedures in the personnel area, and more recently has engaged in rulemaking in the immigration field.

[12] Foreign Affairs Manual Circular No. 672A, March 27, 1974.

1712

authority [of the foreign affairs function exemption]. By practicing greater openness in rulemaking, the Department could be assisted in making better informed decisions, and the American People will have a greater voice in the formulation of Department policies which affect them. Thus the general practice will be to publish Proposed Rules.

The Department, however, has put into effect no procedures to determine whether and when the foreign affairs function exemption should be utilized and has assigned no office an oversight responsibility. Furthermore, the Department has simply failed to abide by the "general practice" mandated in the Circular; since promulgation of the Circular, only a handful of rulemakings have occurred and almost all have been general rules relating to immigration.

Aside from immigration regulations, the sole significant substantive area now subject to public proceedings is the environment. The National Environmental Policy Act of 1969 [13] requires that all government agencies prepare and make public "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment," a detailed statement on, *inter alia*, the environmental impact of the proposed action and alternatives. The Department of State originally argued that this procedural requirement was inappropriate for international negotiations and that the Act applied only to actions within the United States. Subsequently, however, the Department concluded it was not exempted from NEPA, and it agreed to promulgate regulations with procedures for impact statements and to file such statements.

The present NEPA regulations [14] require the preparation of environmental impact statements for all Department actions significantly affecting the environment, *e.g.*, a negotiation leading toward a marine pollution convention. A draft statement is "where possible, normally" prepared and disseminated for other agencies and public comment prior to the commencement of negotiations (before Circular 175 authority to negotiate is sought). The draft, if prepared before a U.S. position is formulated, may contain alternative course of action without indicating the Department's preference. The regulations provide for public hearings.

Other foreign affairs agencies, like the Agency for International Development and the Export-Import Bank, still claim an exemption from NEPA and do not follow the procedures required by that Act.

[13] 42 U.S.C. §4321, *et seq.* (1970).
[14] 37 Fed. Reg. 19167–68 (1972).

Many agencies that have traditionally had domestic functions, *e.g.*, the Department of Commerce, are assuming added responsibilities for subjects with a transnational component. These agencies have regulations establishing elaborate administrative procedures. But instead of using or modifying their normal procedures for their new duties, they are exempting inherited foreign affair-related functions from regulations requiring public participation.

The Panel believes that total exemption of foreign affairs functions from administrative process is not justified. Many aspects of these functions are analogous to domestic issues now subject to process; the fact that they take on an international dimension does not necessarily or even probably mean that all forms of administrative process should be excluded. The recent experience of the Department of State in the environmental area demonstrates that foreign affairs issues involving international negotiation can be subject to hearings, a reasoned explanation of the decision made, and at least a partly public record, without prejudicing efficiency, our negotiating posture, or our other national interests.

Some foreign affairs matters, for instance those relating to the major war and peace issues of the day, may not be suitable for formal administrative process. We do not here draw a specific line between those which are and those which are not. Attempting to do so by subject matter has too many failings. As a matter of policy, there is no reason why a delegated authority should be treated differently from a constitutionally derived Presidential power, or Congress' foreign policy making from the Executive's (especially since so many areas overlap and so many decisions relate to the same subject). A far better solution would be for each problem or group of problems to be examined to see whether utilizing a formal process would be meaningless or would substantially impede policy making. This is likely to be so where the bulk of essential information concerning the matter must remain secret, or where speed is truly necessary. Even if the requirements of dispatch militate against prior public input, some form of *ex post facto* process may be useful if the issue is a continuing one. A presumption in favor of process should be followed.

We recommend (1) that the Executive branch, through a rulemaking or other public and comprehensive process, adopt, consistent with the solution mentioned above, regulations subjecting both delegated and constitutionally derived foreign affairs functions to administrative process, and (2) that Congress amend the Administrative Procedure Act to eliminate the total exemption for foreign affairs functions and to replace it with a far more limited

173

exclusion.[15] An alternative worth considering is to eliminate totally the foreign affairs function exemption, and to rely on other general APA exemptions for exclusion of those foreign affairs issues that are not approrpiate for administrative process.

Advisory Committees and Delegations

The Department of State and other foreign affairs agencies invite certain persons to advise on the making or implementation of policy through appointments to advisory committees and to negotiating delegations.

In the Federal Advisory Committee Act, which became effective on January 5, 1973, Congress stated the policy that "the public should be kept informed with respect to the . . . activities of advisory committees." The Act requires that membership of the advisory committees be "fairly balanced." Meetings and committee records are to be open to the public unless the committee is concerned with a matter listed in the exemption section of the Freedom of Information Act, *e.g.*, a matter specifically required by Executive Order to be kept secret in the interest of foreign policy.

One basic problem with advisory committees is their composition. The tendency of both political parties has been to select members on a basis of patronage. A White House "political clearance" is now a prerequisite to appointment. Most committees do not contain persons reflecting all viewpoints. Agencies often select homogeneous, compatible groups which will show great deference to the government. Many committees aggravate an already existing imbalance by leaving out certain interested segments of society and then by making their meetings secret. For example, some of the Department of State committees, like the Advisory Committee on International Business Problems, consider trade issues, but not one has a representative of a consumer organization as a member. The Department of Commerce has established the Management-Labor Textile Advisory Committee to assist in formulating textile trade policy. Those meetings were closed to counsel for consumers because "foreign policy" was discussed.

A second problem is that the government often seems unwilling to discuss significant foreign affairs problems in advisory committees. The Department of State's approximately twenty advisory committees include an "Advisory Committee on the Arts," one on "Art in the Embassies Program," and a "Fine Arts Committee." We do not wish to downgrade the arts, but note that there is no committee to advise on East Asian policy, and the "Advisory Council on European Affairs" has been disbanded because of lack of funds and because it was not worth the bother. The Department appears to be seeking advice in areas that do not involve its primary mandate, and when foreign affairs is the topic, the government tends to brief, rather than debate with, Advisory Committee members.

The Panel has mixed feelings about foreign affairs advisory committees. The great majority of past or existing committees, especially those which consider less technical foreign affairs issues, have been of little value in terms of increasing meaningful public participation in the decision making process. In providing a new, and most often closed, forum to certain elements who already have far more access than competing interests, they are, on balance, detrimental.

This is not to say that advisory committees could not play a useful role. If the government were prepared in connection with significant foreign policy issues to invite representatives of groups who otherwise are excluded from the process or persons with viewpoints contrary to those of the government and provide them with adequate information, committees could engage in adversary debate with potentially beneficial results, both for the government officials and the private participants. We cite as examples the Department of State's advisory committees on private international law, copyrights and patents, and the law of the sea. The Advisory Committee on the Law of the Sea was once industry dominated, but now includes representatives of all interested elements of society. Committee members meet several times a year, receive confidential information, engage in active discourse with government officials and each other, and are invited to be advisers to negotiating delegations. Closed advisory committees present an opportunity for the Government to consult privately with representatives of citizen groups in instances where confidential information is being considered and where open, public consultation would not be possible.

A form of involvement analogous to advisory committees is participation on negotiating delegations. Such a procedure may be a useful way for the government to obtain on-the-spot advice or viewpoints; and, to the extent it is, we support it. However, delegation membership should not be a tool for allowing private parties who already work intimately with government to intensify their input, while competing interests are again excluded. The Department of State generally does not bear on the expenses of its advisers. This policy is unsound, for over the long run, it will lead to a situation where only monied interests will be able to accept invitations to join delegations.

[15]See Bonfield, "Military and Foreign Affairs Function Rule-Making Under the APA", 71 Michigan Law Review 222 (1972).

1714

The Congress

By far the most pervasive way in which the public formally participates in Congressional policy making is through the Committee hearing. A broad or limited issue is opened for debate. Members of Congress express their views. The Administration testifies. In the Senate Committee on Foreign Relations and in other committees, an interested spokesman of a public segment may also do so. Witnesses are subject to cross-examination. Information is submitted, and often the hearings and a report are published.

The Congress (sometimes the Senate alone) holds hearings relating to foreign relations in connection with advice and consent on treaties, the passage of substantive laws or resolutions, and oversight of the implementation of laws and international agreements. It also weighs foreign policy when it considers bills appropriating or authorizing funds or advice and consent for ambassadors and ministers, although a primary focus in such cases has, until recently, most often been fiscal or the talents of the person in question.

One grave limitation on Congress and, therefore, on the influence of the public through Congress, is that this branch of the government usually rules with a broad brush. Its laws give the Executive broad delegations of authority, far more latitude than is granted in the domestic area. Often the President is permitted to act contrary to a general Congressionally stated policy, if he finds without explanation that the "national interest" or "national security" so requires.

Further, often the Congress is faced with a *fait accompli, e.g.*, a displacement of troops yesterday, or a completed treaty negotiation (usually allowing only approval or rejection).

The Panel believes that public hearings are such a crucial element to public participation that their use should be increased so that they may provide an open forum for every significant foreign policy occurrence. Committees often meet in closed session to receive classified material vis-a-vis a particular action, *e.g.*, the bombing of Cambodia. We believe open hearings should be held after these closed sessions. Even if some information must remain confidential, the public is generally aware of the essence of these actions and should be afforded the chance to express its views. The House of Representatives has recently adopted liberalized rules of procedure which provide for more open hearings. The Senate should do the same. Records of hearings now confidential, *i.e.*, records of mark-up sessions, should be published.

Thought could also be given to varying the form of hearings or of committees. A parliamentary-type question period during which cabinet officers are subjected to intensive questioning about current happenings would draw public attention. A Joint Senate-House Foreign Policy Committee, similar to the Joint Economic Committee, could elicit and make public more information and provide a more powerful and unified hearing forum. A bipartisan Conference which included members of the public could obviously influence public and Executive branch policy.

The Congress is an important source of public information. Yet, its independent information gathering capabilities are small. The Department of Defense in 1973 admitted, after disclosure by a former Air Force officer, that it knowingly forwarded to the Senate Armed Services Committee falsified reports on Cambodia bombing. Such a revelation somehow inextricably leads to the conclusion that Congress should develop its own information sources so that both it and the public can be better and more accurately informed.

Toward this end, we recommend that Congress expand the role of the General Accounting Office. That agency is totally independent of the executive branch and has tended to be politically impartial, factually objective, competent, and thorough. It has undertaken several fact finding, investigating, and reporting missions in the foreign affairs area, *e.g.*, the effectiveness of foreign aid and the Soviet wheat sale, and these reports added facts and insights that had not been public.

The Congress constantly receives from the Executive confidential information and treats it as such. It should do more to obtain information, *e.g.*, arrange regular briefings from Executive intelligence agencies. Since the Executive branch has not yet developed a system which assures citizen access to information which should be public, Congress must independently determine whether information it receives merits classification. If not, it should exert sufficient pressure on the Executive to see that the information is released. This matter is discussed more thoroughly in the Panel's papers on secrecy.

Congress should make efforts to allow the public to play a role in its consideration of broad aspects of policy. It should consider the use of advisory committees composed of all interested segments of society, both with respect to specific and general issues. Each year the President conveys a State of the World message, that is, foreign affairs as seen by the Executive. The Congress could prepare an annual report on the State of the World, taking into account the opinions of its constituency and with a view toward educating that constituency.

Two substantial inhibitions to the participation of many citizen groups before Congress are the tax laws and internal revenue regulations. These seriously limit the right of charitable and educational

1715

groups to testify before Congress or otherwise lobby on legislation, and in effect prohibit these activities by recipients of tax-exempt charitable contributions. In other words, a corporation or trade association can participate, through lobbying, in Congressional foreign policy decision making and deduct the cost from income tax (*i.e.*, use tax exempt funds), while a charitable or educational group with tax exempt funds, *e.g.*, the American Society of International Law, or a consumer group with an interest opposite to industry's, cannot counter that industry lobbying. We believe denying public service groups access to Congress on foreign affairs issues is inconsistent with at least the spirit of the Constiutional provision guaranteeing citizens the right to petition Congress and is unwise in proscribing an important aspect of public participation. Such a prohibition is totally unjustified when competing pressure groups, like industry, are freely allowed to lobby. The tax laws and internal revenue regulations should be changed to eliminate these discriminatory inhibitions.

Earlier the issue of the proper distribution of powers between the Congress and the Executive was raised. The conclusion that the legislative branch should assert more authority in the areas of war making and international agreements is reflected in chapters on those subjects. But there are a substantial range of what may be considered "lesser" international issues over which the Congress should maintain more control. These include, for example, economics and trade, communications, transportation, human rights, and environment. Congress may now assume jurisdiction in these areas by legislating or by the Senate's giving advice and consent, but it so often does this with a broad delegation of authority, leaving wide subsequent discretion to the President.

To do this, Congress should include more procedural safeguards in such legislation. Especially in cases when procedural safeguards are not suitable and where discretion must be broad, Congress should maintain an active oversight regarding the implementation of a law or international agreement. For example, when the Senate gives advice and consent to a treaty, it should consider requiring an annual report from the Executive on implementation. In receiving such a comprehensive report, the Senate, through its staff, automatically will be informed of the evolution of U.S. policy concerning the substance of the agreement. To the extent it (or the House) disagrees with the Executive's interpretations or actions, it can hold hearings and take remedial action.

Conclusion

As noted above, there are, at present, structural inhibitions to the right amount of public participation in the foreign policy decision-making process. The prevention and absence of such participation can and does lead to inferior foreign policy and/or unhealthy conflict between government and citizenry. Several modifications in governmental processes can increase public participation and result in wiser policies without impairing the orderly conduct of international diplomacy.

1716

Foreign Policy Information

Stanley N. Futterman*
June 1974

I note the Commission is charged with recommending a "more effective system for the organization and implementation of the nation's foreign policy." But no guidance, as far as I can discover, is provided in the legislation as to what is meant by "effective." I would hope that in considering its mission the Commission might wish to seek arrangements that are "effective" not only in the sense of promising to provide for a more enlightened foreign policy, but effective as well in terms of realizing through the way in which our foreign policy is made the highest ideals of this country.

Perhaps there has been no better capsulization of those ideals than Lincoln's reference to a government of and by, as well as for, the people. Whether a foreign policy formulated in accordance with this prescription will be an enlightened policy will depend on the beholder. But at the least it will be the policy the people have chosen for themselves.

To the extent that foreign policy is made and conducted in secret, Lincoln's ideal is obviously compromised. And yet without some secrecy there clearly might be no government at all. The fact is there are a good many real secrets, and any effective system of foreign policy must have a way of preserving them. The issue, then, is really how to tell the necessary secrets from the unnecessary.

Before focussing on this precise issue, it is useful to distinguish between two separate audiences for foreign policy information: the Congress and the public.

Denial of information to the Congress is usually treated under the rubric of Executive privilege. I don't mean to trespass to that subject, which I am sure will be very adequately covered this morning, but I would call attention to two points of intersection of Executive privilege and classification, the latter subject being the one I have been asked to talk about.

First, one of the main areas in which Executive privilege has been asserted is that of foreign and military affairs, which is precisely the subject matter of classification. For example, the Eisenhower administration, in 1960, refused to disclose to the Senate Foreign Relations Committee just what the reasons were for having U-2 flights so close to the time of the Summit Conference, citing reasons of security which were accepted by the Committee at the time.

More recently, some have argued that the need for secrecy can never be a reason for denying information to Congress since the information can always be provided in classified form. In Senator Weicker's words, in a recent debate on the Senate floor he referred to the "election to Congress as providing one's own security clearance." In response, one can argue that if the President is responsible for safeguarding genuinely sensitive information, that responsibility doesn't end, necessarily, just because a Member of Congress, or even a Congressional Committee, asks for the information. If the President is persuaded that the information will not be secure in the hands of a Congressional Committee, the fulfillment of his responsibilities may require that he withhold the information, at least until there is specific legislation directing him to disclose it.

Some would argue that the President's Constitutional prerogatives to withhold information cannot be invaded even by legislation. This is an unsettled point. One of the few available guidelines is provided by Justice Jackson, who said in the *Steel Seizure Case*, "A President's Constitutional powers are at their lowest ebb when exercised contrary to specific legislative direction." We ought therefore to be very cautious in concluding that a President could withhold information in disobedience of duly enacted law.

A second area of intersection between the two topics of classification and Executive privilege arises with respect to the fact that information provided to a Congressional Committee, under conditions of secrecy, may not be very usable so long as it remains secret. Indeed, I think that perhaps the providing of information under classification is one

*This paper reprints testimony before the Commission on the Organization of the Government for the Conduct of Foreign Policy given on June 18, 1974.

1717

of the techniques by which the Executive Branch has coopted Congressional Committees, rather than cooperated with them, in the past. Thus, even if Congressional Committes could get all the classified information they wanted, classification would still pose a serious obstacle in the effective functioning of the Congress.

The classification system plays a much more direct role in obstructing the public's functioning in the area of foreign policy. This was not always so. The classification system's historic function, has simply been to warn government officials to be careful in handling certain information and restrict it to those in government with a need to know. Since the public at large historically had no right to any government information, the government didn't have to rely on classification as a basis for denying public requests. It could simply say, "This is none of your business."

Now, with the enactment in 1966 of the Freedom of Information Act, the general rule has been established that the government's business is the public's business and no special entitlement to government information need be shown. However, the effect of the Freedom of Information Act, with respect to classified information, has really only been to give classification special significance.

The first exception to the Freedom of Information Act's general rule of a right to compel disclosure is the exception for information "specifically required by Executive Order to be kept secret in the interests of the National Defense and Foreign Policy." In other words, classified information. Thus, the Freedom of Information Act simply defers to the Executive on the question of what information in the foreign and military affairs area is to be kept secret.

Now, one might expect that in exercising this authority, the Executive might seek to balance the conflicting demands of democracy and secrecy. In fact, the applicable Executive Order prescribes secrecy whenever unauthorized disclosure could reasonably be expected to cause damage to the National Security. And the Supreme Court, in the *Mink* case, has interpreted the Freedom of Information Act's reference to the Executive Order as requiring utter deference from the courts as soon as there is filed an affidavit from a responsible official asserting that the document is classified and contains sensitive matters pertaining to national defense or foreign policy.

Now, this session, both the Senate and House have passed bills that would amend the Freedom of Information Act in this respect. The amendments, whose final wording, I believe, awaits the conference committee (scheduled for June, 1974), would specifically authorize the courts to conduct an *in camera* examination of the requested documents. I doubt, however, that this amendment, alone, is going to have much effect on the release of classified documents. The reason for this is simply that courts are hardly in a position to substitute their judgment for that of the Executive on the question of whether disclosure might harm the national security.

This seems a paradigm of what the Supreme Court has treated in the past as a political question —one that is for the political authorities to decide. At most, I think we might expect some overturning of the more clearly trivial examples of overclassification. It is not unknown, for example, for newspaper clippings to have been classified. But these instances are precisely the ones that are not likely to reach the courts. And if they do, no new information will result. The serious instances of overclassification are likely to escape unscathed.

For example, perhaps the most egregious abuse of the privilege of secrecy in recent years was the coverup of the bombing of Cambodia. Yet it is not hard to construct a rational basis for keeping this information classified in terms of the criteria established by the Executive Order. It is quite true that the enemy in Cambodia must have known what we were doing, that the major purpose of concealment may well have been to disguise from the American public the fact that the Nixon strategy of withdrawal from Vietnam included substantial elements of escalation. But the concealment may be defended on foreign policy grounds—for example, that it made it possible for Sihanouk to tolerate the bombing while preserving a neutralist image, just as concealment of our bombing in northern Laos made it easier for Souvanna Phouma to retain his position there.

What was wrong with the concealment of the Cambodian bombing and, I think much else done in secret, is not that national security objectives are not served, at least in the short run, but that these objectives have been permitted to overrun countervailing values of transcendental importance. The question is, how can these countervailing values be given their due?

One possibility that has been suggested in Congress this term is to specifically charge the courts with the responsibility of weighing the need for secrecy against the value of openness in the particular case. Now the problem with this solution as with the similar solution, previously considered, of having the courts undertake *in camera* review of national security judgments is that it asks the courts to make a fundamentally political judgment. They are not well equipped to do this, they have no available standards with which to do it, and they would probably regard themselves as constitutionally prohibited from doing it.

Another suggestion has been to create a classification review commission which, in addition to ex-

1718

ercising general supervision over the system, would hear appeals from agency refusals to declassify information. I think it probably would be useful to create an institutional force of this sort within the government that will work for greater openness. At the same time, I doubt that this solution will be adequate.

The major reason for this doubt is that if the President is left with authority to override commission decisions, then the most important matters, those in which the President is interested, are likely to remain classified. At the same time, it might well be unconstitutional to give a commission final discretionary authority to release classified information. And there would be the most serious constitutional problems with vesting the power of appointment and removal of the members of such commission in sources other than the President.

Finally, in many cases the commission would not know important material which was being held secret. It would be dependent on requests for information which are, themselves dependent on information. For all of these reasons, something more would seem to be needed.

One device which I would particularly like to suggest for the Commission's consideration, is the establishment by legislation of affirmative duties of disclosure with respect to certain types of information.

The first step in establishing this kind of duty has actually already been taken with the enactment of the War Powers Resolution in November, 1974. The focus of the War Powers Resolution is the assertion of control by Congress over the President's use of the Armed Forces for a period in excess of sixty days. However, it was correctly perceived by Congress that a necessary incident to the assertion of that control was the establishment of a specific reporting requirement of all situations in which the Armed Forces are introduced without a declaration of war into hostilities or into situations where involvement in hostilities is imminent.

Now, the War Powers Resolution does not specify this reporting must be done in public. And it is possible that in the case, at least of short term deployments, that the report might be submitted in classified form, and that the Committees of Congress to which the report is referred might even agree not to share it with their fellows. However, I hope that this prospect is more theoretical than real. Reporting in secret would, I think, violate the spirit, if not the letter, of the War Powers Resolution.

The War Powers Resolution thus can be seen to establish a positive duty of disclosure with respect to perhaps the most important category of information that should be made public. Under it there could have been no sustained secret bombing of Cambodia, or secret involvement of U. S. Forces in Laos. But the War Powers Resolution by no means exhausts the categories of information, where the balance between democracy and secrecy should be struck on the side of democracy.

Without trying to be exhaustive, I would mention as candidates for disclosure categories, the following areas:

First, U. S. support for military operations of other governments. For example, the planning and funding of covert South Vietnamese military operations against North Vietnam for the seven months preceding the Tonkin Gulf incident in August, 1964, something that was not learned of until some years later.

Second, the support of insurgent groups in other countries. It is widely believed that the United States has supported insurgent movements in such countries as Indonesia, Tibet, Tanganyika, Iran and Albania, as well as in the more familiar cases of Guatemala and Cuba. And this, again, seems to be information so vital to control of foreign policy that it should be made available.

Third, financial and other assistance to foreign countries such as force commitments and statements of intentions to foreign governments to provide assistance or send military forces abroad.

With respect to each of these categories, and perhaps others, and I am sure there are others that deserve consideration, the Congress should at least debate, and decide whether the marginal advantages of keeping the information secret can outweigh the public's need for the information in order that the public and the Congress may have a chance at directing the main course of the country's affairs.

Thank you very much.

1719

Executive Privilege in the Conduct of Foreign Policy*

Rita A. Hauser**
June 1974

In commenting on the right or the power of the President to withhold information from Congress in matters concerning the conduct of foreign policy, I see no reason to review exhaustively the historic conflicts between various presidents and the Congress on this point. The meaning of these conflicts has been controverted by various Attorneys General, lawyers and historians, without final resolution. What is clear is the absence of any authoritative judicial ruling on the existence and extent of the President's inherent constitutional right to so withhold, a right which has come to be termed his Executive Privilege.

Nowhere is the phrase "Executive Privilege" to be found in the U.S. Constitution. The power to withhold information in foreign affairs matters requested by Congress, first asserted by President Washington and by other presidents thereafter, must then derive logically from the very independence of the executive and legislative branches of government vis-a-vis one another. Each branch is presumed sovereign as to the other, the powers of each branch being expressly or impliedly laid out in the Constitution. Neither can dictate to the other branch the conduct of its own affairs.

What the Judiciary may decide as to the power of either branch, or what it may do in case of a demand from one branch for information from the other, will be dealt with later on in this paper.

This much stated seems simple enough. That each branch of government might wish to conduct its own affairs in private, secretly if you will, from the reach of the other branch or of the public, stems from the sovereign nature of its governance. Secrecy in government, in itself, should not shock, for it has always been accepted as necessary at times; indeed, it applied to the deliberations of the Constitutional Convention of 1787. The Constitution itself permits each House of the Congress to delete from the daily journal "such parts as may in their judgment require secrecy" (Art. I, Sec. 5). The need for secrecy was part of the Founders' consideration in granting, explicitly or by inference, the dominant power in foreign affairs to the Executive, rather than a collegiate body, the Congress (see The Federalist No. 70). Consent to the Executive's treaties was given to the far smaller Senate, for there was fear that the House could not maintain secrecy as well (see The Federalist No. 64).

Congressional committees, in one manner or another, have recognized the need for Executive secrecy, particularly in military and foreign affairs. Congress has recognized the Executive's classification system and provided for enforcement, in some instances by criminal penalties. If, in recent years, Congress has reacted to what it deems an abuse of Executive classification of documents, it is noteworthy that the disclosure requirements of the Freedom of Information Act do not apply to matters "specifically required by Executive order to be kept secret in the interest of national defense or foreign policy." And the Supreme Court has recognized the need for some secrecy in Executive activities.

The President's claim to withhold information pertaining to domestic matters is assuredly more limited by the very nature of the President's power, which is essentially to execute faithfully the laws made by the Congress. In foreign affairs, his powers are explicit, and some powers are independent of the Congress altogether (e.g., to receive Ambassadors). There is really no question that in the conduct of foreign affairs of the country, the President can reasonably withhold from Congress information relating to that conduct. Thus, the various Executive departments of government have often been called upon to give to Congress what it requests in the way of information, but Congress has asked information of the State Department only "if not incompatible with the public interest".

The courts have frequently upheld the Executive's power to withhold from the court itself

*This paper reprints testimony before the Commission on the Organization of the Government for the Conduct of Foreign Policy given on June 18, 1974.

**The views expressed are solely those of the author.

1720

information which the Executive denominated "military", "state" or "diplomatic" (*United States v. Reynolds*, 345 U.S. 1, 1953). But courts have been less reluctant to treat as privileged other types of evidence held by the Executive. And in *Jencks v. United States*, 353 U.S. 657 (1957), the Supreme Court required the government to make witness reports available to the accused or drop the prosecution, thus compelling the government in a criminal case, and in civil actions where it is the plaintiff, to produce any relevant document, even a privileged one, or lose the case.

Where it is Congress that is demanding production of information from the Executive, the courts have not been seized of the issue of the propriety of the Executive's refusal to produce. Congress has been reluctant to issue a contempt citation against an unwilling Executive, much less to attempt to enforce it by having the Sergeant at Arms seize the offender, who could then, of course, test the matter by seeking a writ of habeas corpus.

The result of this judicial abstention is that the Executive enjoys broad discretion to decide what to produce to Congress. This is a pragmatic conclusion, for the claim to constitutional immunity from production has never been determined by the courts. The *Reynolds* decision makes clear that the Supreme Court believed itself fully competent to resolve that issue. Although the Executive might assert his independence vis-a-vis the Judiciary, surely if Congress issued a subpoena and the Court held it enforceable, one believes the Executive would obey whether or not Congress or the Court literally could force him to do so. This is the conclusion of the Watergate tapes litigation, although, admittedly, this case dealt with Congress' power to impeach and try the President, for which any claim to Executive Privilege is a shaky one, rather than with the President's power to conduct foreign affairs.

Because the President's power to conduct foreign affairs has become by accretion virtually plenary, the courts have bowed to his unilateral assertion that given information is cloaked with diplomatic or military privilege. If Congress were to legislate to limit the President's right to withhold such information, I believe the act would be deemed unconstitutional in those instances where the President asserts that the information would violate the confidentiality of the Executive Branch or that the subject matter falls within those of his exclusive constitutional powers. Where the subject matter involves powers concurrent to the Executive and the Congress, the act might be constitutional, and Congress could insist on the information assuming a procedure could be devised to ensure necessary confidentiality.

In addition, Congress can challenge the wisdom and extent of the Executive's classification system, for to the degree it is called on to legislate enforcement of violations of classified material, its power is surely concurrent with that of the President. Even if Congress refused to enforce violations of the Executive's system of classification, in my view, it still could not constitutionally require the President to disclose foreign policy information he chooses to withhold which is deemed by him to be confidential or which falls within his exclusive powers.

Only a Constitutional Amendment could limit the President's power to withhold this type of information. This, in my opinion, would be unsound as a matter of policy, for Congressional abuse of classified information can be as great as Executive abuse, and such strictures would fetter the President's ability to carry on our foreign policy.

What is required is not assertion of power by each branch toward the other, but mutuality of confidence and respect between the two branches. Had that not, alas, diminished in this past decade or two, the issue we are discussing today would remain academic.

1721

The Power to Make War

W. Taylor Reveley, III
November 1973

BACKGROUND

Old Controversies of New Importance

Since government under the Constitution began in 1789, struggles for control of the war powers have erupted periodically between the President and Congress.* By 1815 the United States had fought an array of Indians, in effect foreign enemies; the two greatest powers of the day, France and Britain; and the rapacious Barbary states, Tripoli and Algiers. The Republic had skirted hostilities with Spain while pressing to relieve that decrepit colonial mistress of her Florida possessions. It was not a pacific era. Predictably, the respective constitutional prerogatives of the President and Congress over war and peace were of consuming concern to Americans while Washington, John Adams, Jefferson and Madison held office. Nor have there been many administrations since in which the nature of these prerogatives has not been debated with some heat. The struggle occasioned by American involvement in Indochina, though classic, has ample precedent.

Why the persistence of controversy over presidential and congressional prerogatives? It has lingered in part because of the constancy with which Americans have made decisions to commit or withhold the military. Persistence also reflects the weighty nature of the subject. Profound consequences may accompany the use or nonuse of force. Disputes of corresponding intensity have arisen over the extent to which each branch is entitled to make war-peace determinations. Passion and dogged adherence to position aroused on this account have been given new edge precisely because the disputes have concerned the separation of powers. Presidential and congressional zeal in defense of real or imagined prerogatives is traditionally acute. And argument over the allocation of war powers conjures up two of our most cherished political horribles: the fear that American democracy will perish choked by presidential tyranny, and the obverse dread that it will smother amid congressional indecision and parochialism. Thus, with stakes so high, partisans have been loathe to leave the constitutional fray.

Persistence, too, has resulted from the accumulation of unresolved controversies. There has been no formal amendment of the Constitution to lay any executive or legislative claims to rest. And unlike most other areas of constitutional interpretation, this one has received little judicial guidance. Judges step lightly when near the conflicting claims of their political colleagues about constitutional prerogative. Moreover, relevant judicial decisions since 1789, to say nothing of nonjudicial practice, have often reached inconsistent conclusions. Most plausible and many quaint readings of the war-power allocation exist in one recess or another of the interplay among Presidents, Congresses and, occasionally, courts. Contrary allocations of control have existed in fact, and contradictory statements have been made by different men about what sorts of allocations are constitutionally required. With unsettling frequency, the same luminaries—Madison and Hamilton without peer—have varied their constitutional conclusions with changing times.

Interpretative flux has been eased by the uncertain constitutional language on point. Flux has been vigorously promoted by our tendency to collapse the constitutional question of where decision-

*To lesser degree, war-power struggles have also raged between the President and Senate, on the one hand, and the Senate and House of Representatives, on the other. On another plane entirely has been controversy over the scope of the country's war-peace authority—to what extent it is limited by state and individual rights, by the separation of powers among the President, Senate and House, and by international law. The Framers and Ratifiers of the Constitution, in fact, focused on the allocation of war powers between the national government and the states, not on that between the President and Congress. Finally, questions have arisen over the war-power role of the third federal branch of government, the judiciary; and problems have been created by other federal personnel, most often military subordinates of the President, who embark on war-peace action unauthorized by either him or the legislators. History has proved the division of war powers between the President and Congress to be the most intractable of these issues.

1722

making control lies into the policy question of what we would like for the President or Congress to do about a pending situation. Such result-orientation has been with us since 1789, but never so vividly as in the recent stampede of many away from assertion that the Executive controls American use of force by constitutional right. Inevitably, then, recurrent disputes over the respective war-power prerogatives of the two branches have fueled future controversy almost as often as they have provided occasions for case-by-case definition of the allocation.

If war-power struggle between the President and Congress presents no sudden constitutional issue, it has since the Second World War presented one of wholly new dimensions. The reasons are rooted in a threefold change in American circumstances: in our capacity and will to use force abroad and in the consequences of that use. The purely physical ability of postwar America to commit its military abroad in large or small numbers, swiftly or slowly, for days or years, vastly exceeds the country's conflict capacity prior to 1941. Similarly, America's willingness to intervene abroad whether for war or peace stands in revolutionary contrast to its previous tradition of noninvolvement with most of the rest of the world, except to trade. Geography, the state of military technology, a viable European balance of power and economic self-sufficiency once permitted the country to regard its security very casually. No longer. Vietnam perhaps will lessen the bombast by which the United States works out its salvation along with the rest of the world, but not the awareness that American well-being is linked with that of other nations.

Ironically coupled with the country's changed capacity to use force abroad and its new willingness to do so are consequences of intervention that defy prediction and risk catastrophe more relentlessly than ever before. Since 1945 the pace, complexity and hazard of foreign affairs have grown exponentially. A misstep invites obliteration inconceivable when the United States was safe behind its ocean moats. Even the time when the coercion of weak states carried only modest legal and political costs has clearly passed. Never again with impunity may the Navy smite backward peoples who have attacked American citizens and property; nor may it freely pursue criminals across the borders of weak states, or lightly occupy dissolute Caribbean countries.

ISSUES

The war powers directly involve a range of military prerogatives: control over raising, organizing and supporting troops, as well as their command and disbanding; control over their use, for instance, when and where to station, deploy or commit them to battle; also control over military strategy and tactics; and over the terms and timing of peace.

More broadly understood, the war powers involve prerogatives, not just over military matters, but over all American action that significantly affects when the country must make use-of-force decisions and what they shall be: for example, control over American policy on the treatment of aliens, foreign aid and trade, neutrality in other nations' conflicts, or the presence of foreign troops in this country.

Use of the military, moreover, is usually begun under circumstances that make resort to it hard to resist; pressures for commitment exist, both domestic and foreign, that often could have been avoided or mitigated had different American policies been pursued during the formative period. Thus, control over American war and peace entails far more than a voice in twelfth-hour determinations whether to unleash the military.

Further, war-peace action in any of these areas is not spontaneously generated by noises in presidential or congressional throats, or by their paper scratchings. Rather, to come to fruition, each type of action must be effected by one or more of these tools: men, money, international agreements, communications with other governments, or regulations governing private American conduct. The arbiter of tools can sway policy just as soon as the means under its aegis become indispensable, and possibly sooner in expectation of their coming indispensability. It follows that the allocation of control between the two branches over essential tools impinges heavily on the allocation of authority over policy.

In addition, any war-peace action, like other events, progresses through three stages: initiation, conduct and termination. These phases have proved important to the division of authority between the President and Congress. Also crucial has been the extent to which each branch participates in decision-making about any particular action. What one may do assisted by the other's silence, for example, often varies from what it may do in the teeth of the other's opposition.

Congressional-executive struggle for the war powers, in short, teems with constitutional issues. Focus here, however, falls on only two core questions:

(1) the scope of presidential prerogative over the initiation, conduct and termination of American involvement in combat, when Congress as a whole remains legislatively silent regarding the action; and

(2) the scope of congressional and executive prerogatives over the same involvement when

1723

the two branches disagree about the proper national course.

Against the background of comment on these prerogatives, attention then goes to a third issue of particular concern today:

(3) legislation as a means of implementing congressional-executive war powers.

DISCUSSION AND RECOMMENDATION

I. Constitutional Guidelines for the War-Power Allocation

Articles II and III of the Constitution bear on the prerogatives at hand, but in uncertain fashion. The pertinent language is rife with vague terms, frequent grants of competing authority to the two branches, and outright lacunae.

By the same token, a number of the Constitutional Fathers made relevant remarks during the drafting and ratifying conventions, but their debate suffered from somewhat the same ambiguity, internal conflict and gaps besetting the language of the document itself. More important, existing records of what the Framers and Ratifiers intended for their language are quite fragmentary, and it seems clear that many of their judgments were rooted in problems peculiar to 1787–88. Indicatively, the first generation under the Constitution, more than subsequent Americans, tended to interpret the document simply by reading its text in light of experience; in this regard, it is significant that James Madison's notes on the Philadelphia Convention—the only detailed account of its debates—did not publicly appear until 1840.

Far more than the Constitution's language and its Framers' and Ratifiers' intent, post 1789 war-power practice speaks to the prerogatives in question, but with even greater confusion. Cold-War patterns, for instance, show scant relation to those of 1789–1815, though recent practice is explicable in light of intervening evolution.

On balance, the constitutional language tilts toward Congress, a tilt made more emphatic by existing evidence of the Framers' and Ratifiers' purpose. That tilt, however, has been steadily reversed by the interplay of Presidents, Congresses and courts, moving slowly toward the Executive during the 19th century, and more rapidly, often radically during the 20th century.

The constitutional allocation of war powers between the President and Congress is especially unclear today. Many continue to hold to the Cold-War consensus that the Constitution vests in the President broad prerogative over American war and peace. For many others, however, Indochina wakened latent belief in a plenary congressional role, rooted in pre-twentieth century practice. Thus the President and Congress differ radically about the constitutionality of the war-power legislation enacted over the Executive's veto on November 7 of this year. Admittedly, there are those who claim certainty for their constitutional judgments, often seizing on congenial bits of language, intent and practice. But those convinced of their conclusions quarrel doggedly among themselves about the extent to which control "plainly" runs to Congress or the President.

If constitutional answers can not be reached inexorably by reading the language of the document, harking back to 1787–88 debates or scrutinizing subsequent practice, where do we look for solutions? When the governing constitutional language is ambiguous, the most satisfying route home, historically, has run through identification of the text's underlying ends or objectives, and then through interpretation of the language in ways that realize these ends in the times at hand.

II. Definition of the Allocational Ends

What is the United States trying to accomplish by the way in which it constitutionally divides the war powers between the President and Congress? The Framers and Ratifiers began our continuing definition of these objectives. Concern here is first to state the ends, and then to arbitrate their internal conflicts.

A. Ten Ends

Against war-power background from 1787, the following objectives seem dominant:

First, to ensure national defense. The Constitution empowers Congress to tax to "provide for the common Defence" and to call out the militia to "suppress Insurrections and repel Invasions." Habeas corpus may be suspended "when in Cases of Rebellion or Invasion the public Safety may require it." Similarly, the states are guaranteed federal protection against invasion and they are permitted to "engage in War" without congressional authorization if "actually invaded, or in such imminent Danger as will not admit of Delay." Many congressional powers run to the care and tending of the national military, and the President is made commander-in-chief. The Constitution, in short, seeks the physical safety of the Union. The defensive advantages of American unity proved a prime selling point for the document during its struggle for ratification.

"Defense" came very shortly after 1789 to encompass protection of territory claimed or possessed by this country and to cover the security of

1724

American citizens and property abroad. During this century our defense has been linked with that of other peoples, so that an attack on allies has been equated with assault on America. Certainly, zeal for security against subversion and overt attack characterized the Cold War, indicative that the primal end sought by Americans in the allocation of war powers is their own physical protection.

Second, to hinder use of the military for domestic tyranny. The Constitution limits the purposes for which Congress may authorize use of state militia, and provides that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." It limits congressional army appropriations to two years, makes the commander-in-chief a civilian and narrowly restricts suspension of habeas corpus. Quartering troops in private homes during peace is forbidden without the owners' consent. And there are numerous other guarantees of state and individual rights, all to guard against domestic tyranny.

Third, to hinder the use of the military for aggression abroad. In comment on end one, we saw the defensive cast of important constitutional language on the war powers. Naively even for their own times, the Framers and Ratifiers anticipated peace as America's wont. Exhausted by the Revolution, aware of the country's weakness and inclined toward peace in principle, they hoped to avoid the perils of conflict unless thrust upon the nation.

Aggression, however, had greater claim to international legality and to predictable, tolerable consequences in the late eighteenth and nineteenth centuries than it does today. In filling out our continental borders, the United States found armed force useful to remove Spanish, Mexican and Indian obstacles. But even during the most virulent moments of Manifest Destiny, Americans tended to think of their military steps as defensive. Thus the Supreme Court on the heels of the Mexican War had no difficulty opining that American wars "can never be presumed to be waged for the purpose of conquest or the acquisition of territory."*

Nondefensive use of force today would flatly violate international law and trifle perilously with world order. In addition to endangering our security, it could produce conditions conducive to tyranny at home and to bitter internal strife on moral and political fronts, if not physical. Under the circumstances, the country's interest in avoiding aggression has an intensity surpassing that of the Constitutional Fathers.

Fourth, to create and maintain national consensus behind American action for war or peace. Very much on the Framers' and Ratifiers' minds was havoc visited on the country's prior military and diplomatic efforts by bickering and noncooperation among Americans. If most citizens do not acquiesce, at least, in national policy, the country plunges into controversy, with devastating impact on national effectiveness at home and abroad. Versailles and Vietnam in this century witness the dismal consequences of failure to create and maintain consensus behind war or peace initiatives. Antidote for this affliction was termed bipartisanship during the days when foreign affairs significantly divided Republicans from Democrats. An end to acrimony between the Executive and Congress is the most pressing concern today, followed by their articulation of a foreign policy acceptable to the country at large.

Fifth, to ensure democratic control over war and peace policy. The consensus of end four may or may not result from democratic control. It can stem as well, for example, from policies foisted on Congress and the public by executive *fait accompli,* factual slight of hand and clever argument. Consensus, however, is most firm when the product of decision by both branches and responsive to the views of citizens whose interests are affected.

Democratic control involves decisions made by all the federal representatives of the people—the President, Senate and House—each on a timely and informed basis. It involves explanation of policy to constituents and openness to their judgments when clearly and persistently voiced, so that majority will can prevail, whether against a stubborn President, band of filibustering senators, or parochial House Rules Committee. It requires federal officials to take clear responsibility for national action and account for it to the voters. All on the assumption that the full play of representative democracy is most likely to produce policy in the general interest.

Admittedly, a recurrent dread since 1787 has been that public judgment is uninformed, irrational, inconstant and either too militant or not militant enough. Similar fears have been advanced concerning Congress as against the President, the House in particular. The Framers and Ratifiers deemed popular wisdom abysmal in foreign affairs. The notion persists. Thus, we have Hans Morgenthau's conclusion that "there exists an inevitable incompatibility between the requirements of good foreign policy and the preferences of democratically controlled public opinion," and Walter Lippmann's "unhappy truth . . . that the prevailing public opinion has been destructively wrong at the critical junctures."*

The Constitutional Fathers' efforts to shield the President and Senate from direct electoral contact with the masses, however, have been abandoned,

Fleming v. Page, 9 How. 603, 614–15 (1849).

*Hans Morgenthau, "The American Tradition in Foreign Policy," in *Foreign Policy in World Politics* 261 (3d ed. 1967 Marcridis); Walter Lippmann, *Essays in the Public Philosophy* (1955).

1725

and the franchise progressively freed from restraints of race, sex and age. Consent of the governed becomes increasingly central to our polity. It is likely that today's more educated and demanding voters will insist on growing opportunities to challenge and shape policy on war and peace—for consent of the governed has compelling appeal when the consequences of decision are profound. Thus, democratic control remains a proper allocational end pending better evidence than now exists that popular judgment is consistenly poor or impervious to persuasion by those better advised.

Sixth, to encourage rational war and peace decisions. The goal of ensuring national defense without domestic tyranny and foreign aggression defines policy only in broad outline; efforts toward the goal can be sound or disasterously foolish. When to negotiate or fight, what to concede or demand present the best intentioned politicians with difficult choices, as they strive to protect America. The country's haggard progress in Indochina testifies to the difficulties of rational decision-making. Its importance, however, figured in the Constitutional Fathers' opposition to Confederation government and in their concern for an institutionally elite Senate and Executive. The necessity for informed war-power decision has kept step with the growing hazard, pace and complexity of international life.

To obtain policy responsive to world realities and to American values and needs, authority should be the hands of officials who are well acquainted—by dint of their own labor, magnified manyfold by staff aid—with five facets of decision: (a) the country's overall foreign policy objectives and priorities, (b) the basic facts of the situation at issue, (c) realistic alternatives for dealing with it, (d) expert evaluations, both technical and political, of the costs and benefits of each, and (e) criticism of all alternatives —not the prattle of kept devils-advocate, but forceful challenge to underlying factual assumptions, technical opinions and political judgments, especially of alternatives dear to principal officials. Without decision-making of this sort, honest error and incompetence fall on fertile soil.

Seventh, to permit continuity in American war-power policy when desirable, and its revision as necessary. Continuity leads to national credibility and predictability, both vital to assure allies, deter enemies and produce agreements with other countries. Credibility and predictability became objects of passion for many Americans during the Cold War. While continuity was overemphasized then as buttress for third-world dominoes and nuclear tripwires, it is well to recall that the Framers and Ratifiers also worried about pre-1787 harm from the states' sabotage of American foreign policy and from the inconstancy of Confederation Congresses. In matters of war and peace, discontinuity is safer by choice than by internal disarray.

Revision of policy by choice does serve us well. Periodic review of action and its timely modification often has importance equal to its timely initiation. During the earliest years under the Constitution, the country backed away from military alliance with France, a step traumatic but well calculated to avoid destruction of the fledging Republic in European struggles. It can never be in the country's interest to allow hardening of its arteries for review and revision.

Eighth, to permit emergency action for war or peace not blessed by national consensus or democratic control. Any attempt to absolutize the need for consensus or democratic control founders on those occasions when public opinion has been neutral or greviously wrong, and when there has been no opportunity for government advocacy or the course of events to win tolerance for the necessary policies. Suspicion of public judgment, noted in end five, feeds on more than elitist bias. The average voter does lack the information and expertise often crucial to grasp emerging situations. Isolationist opinion during the period immediately prior to American entry into World War II could not have been honored as befit its strength without serious cost to national defense. Thus there is need for emergency philosopher kings to stave off rapacious evils yet unseen by their fellow citizens. Should these officials misjudge the link between international reality and America's values and needs, they will be stymied in short order by lack of consensus.

Ninth, to ensure American capacity to move toward war or peace rapidly or secretly when necessary, flexibly and proportionately always. There will often be need for speed and secrecy in negotiation and in the conduct of action, occasionally also in its initiation or termination. Flexibility—the capacity to act in a manner responsive to emerging circumstances—and proportionality—the avoidance of inadequate or excessive reaction—are always vital to matters as volatile and unforgiving of error as war-peace action.

The demands of nuclear defense have bred singular regard for these capacities, especially speed and secrecy; in Pavlovian manner, both have also been sought in conventional circumstances. Post Vietnam, we are returning to a more traditional and balanced view of the occasions appropriate for lightning response or the cloak. Enroute, however, we do well to remember that the constitutional text reflects concern for speed and secrecy, in the contexts of anti-invasion action by states and of withholding from the public sensitive congressional action. The Framers and Ratifiers' debate on the institutional character of the Senate and Executive

1726

also showed their keen appreciation of the reflexes in question.

Tenth, to permit the efficient making and execution of war and peace policy. Consistent failure on either count undermines the wisest attempts at action. Bumbling government invited constitution-making in 1787–88, and has since encouraged periodic institutional reform of both the Presidency and Congress. Effective federal action is now a primal demand of the American people, risen with growth in problems besetting the country, domestic as well as foreign, and with new desire for public rather than private remedies.

B. Competition and Preference among the Ends

1. Why Competition?

A strain of incompatibility runs among certain of the allocational objectives. Even were the national government still a one-house assembly, wielding legislative and executive powers, it could not give equal attention at once to speed and secrecy, on the one hand, and consensus and democratic control, on the other. Incompatibility in the nature of the ends becomes more pronounced given separate legislative and executive branches, each with different institutional capabilities for realizing the same ends. A bow toward Congress to serve consensus and democratic control turns the back on the President and his comparative advantage for speed and secrecy.

The allocational ends—and respective institutional capabilities of the two branches to realize them—fall into two rough groups. On one side are ends two to five, with their ban on tyranical action at home and abroad and their concern for consensus and democratic control. These objectives are more likely to be obtained if policy is made by the legislative process, rather than by the President alone.* On the other side are ends six to ten, calling for a rational process of decision-making, for continuity in policy until its timely revision, and seeking national capacity for unpopular action, for speed, secrecy, flexibility and proportionality, and for efficiency in making and executing national decisions. These objectives are more likely to be realized if the Executive may act without the need for prior congressional approval.** The first end stands alone, its interest in national defense vulnerable to default on any of the other objectives.

Conflict among the ends, of course, is not inevitable. Even if the President alone controlled the war powers, he might scrupulously avoid wrongful action at home and abroad; he might build consensus behind his policies, and temper them in the fire of congressional and public opinion. By the same token, even were exercise of the war powers subject to prior congressional approval, no immutable force compels the legislators to use irrational means of decision-making, to toss aside essential continuity in policy, or refuse its revision when necessary; no iron law binds Congress to vote down unpopular action vital to national security or to prove incapable of speed, secrecy, flexibility and proportionality; nor are the legislators inexorably fated to sit astride the efficient making and execution of American war and peace policy.

Competition between the two groups of ends does seem inevitable, however, in the sense already described: given the nature of the objectives and the different capacities of the President and Congress to reach them, no allocation of authority can give equal weight to securing both groups at the same time. A division of war powers designed to maximize success for the first, or legislative, set of ends necessarily places less stress on obtaining the second, or executive, set. Which interests are to be preferred, since all cannot be equally sought at once?

2. Preference among Competing Ends

None of the competing ends deserves absolute primacy. Preference, rather, runs by time, some objectives favored early during the life of any action and others later. At the outset, realization of the executive ends, numbers six to ten, ought to be our principal concern, with secondary attention to the legislative ends, numbers two to five. Once the action is underway, however, the order of preference should reverse.

The stated order of preference is more likely to serve the national good, for two reasons. First, there is greater probability that both sets of ends can ultimately be realized if the executive group receives an initial moment in the sun. This conclusion rests on a number of interlocking judgments. At the threshhold, even if the President may act initially without prior congressional approval, he will rarely attempt tyranny at home or abroad. Similarly, his policies may mirror existing consensus, or lead quickly to it; and the Executive is an integral link in the chain of democratic control.

But should the President embark on wayward action nonetheless, his policies can be promptly curbed by the shift in preference to the legislative ends. The possibility that presidential *faits accomplis* will go unchallenged, no matter how egregious, has scant basis in history before the Cold War and dim prospects after Indochina. Thus, despite initial preference for ends six to ten, ends two to five should suffer only modestly during their time of secondary emphasis; but if slighted then, they ought thereafter to be capable of vindication.

The probability of ultimately realizing both

*See III, A, p. 87 of this volume.

**See III, B, p. 87 of this volume.

1727

sets of ends, however, declines if the legislative set is preferred from the beginning. Were congressional approval invariably required before American action could begin, the effect could be lethal to unpopular steps vital to national security (end eight) and to speed, secrecy, flexibility and proportionality (end nine). History suggests that when politically risky action for war or peace must be taken, the legislators often prefer that the President step out alone. Were Congress forced to vote before the country could act, the legislators might more willingly seize the nettle. But the past is not reassuring on this score, and the issue is not one with which nations in troubled times safely experiment. So far as the end-nine national reflexes are concerned, they too can be lethally affected by any necessity to seek and await prior congressional approval, even if the legislators work with all feasible speed and secrecy. While there are few cases in which the initiation or termination of war-power action must be either instant, secret or supple if it is to succeed, in those cases nothing else will do, and it defies man to define them precisely in advance.

Continuity in policy and its timely revision (end seven) can suffer terribly from a failure of American will or reflexes. Further, a rational decision-making process and government efficiency (ends five and ten), though aided in certain respects by the legislative process, are more likely to be harmed than helped by denying initiative to the Executive, so long as the respective capacities of the two branches to handle war-peace issues remain as they are.

If satisfaction of the legislative objectives is preferred from the outset, accordingly, ends six to ten are likely to go begging in many cases. There is no basis for confidence that they will be realized as a matter of course by an allocation bent on consensus and democratic control from the beginning. And the executive ends—unlike the legislative—lack resilience if they are slighted by the initial workings of consensus and democratic control. The time for speed or secrecy, for example, may have irrevocably passed. Moreover, our constitutional tradition can easily accommodate presidential freedom in war and peace *before*, but not after, the legislative process takes hold; thus the possibilities are remote that the country would accept an allocation allowing the President in his discretion to commit America to action *after* Congress has explicitly forbidden it, even though he believes the action vital to national defense.

Turning to the second reason for the recommended order of preference, we confront the question why ends six to ten call for more executive freedom today than seemed necessary in 1787–88. Part of the answer lies in the Framers' and Ratifiers' misperception of the needs of their own times; by 1815 presidential authority over war and peace was greater than they had expected before the new government actually began. More fundamentally, the world has changed over the last two hundred years in ways that makes ends six to ten more important to America than they were in the late eighteenth and nineteenth centuries.

In brief, international life is far more hazardous for the United States than ever before. True, during the first generation under the Constitution, the country suffered the trials of a small, weak nation caught up, if only at a distance, in the wars of the prevailing superpowers. But even then we were protected by geography, the modest state of military technology and by slight interdependence with other countries.

During most of the nineteenth century, America was even further sheltered from international dangers and burdens by the rise of a European balance of power for whose well-being it had no direct responsibility. Thus, American government rarely confronted the possibility that an unpopular, speedy or secret use of force might be vital to national security. It did not face the need to take action, including commitments to other countries, on whose credibility and predictability American security and world order would depend to measurable degree. The timely revision of use-of-force policies—indeed their making and execution by rational, efficient processes—had second-order importance through most of the 1800's akin to the second-class status of the policies themselves. None of these happy circumstances exists today.

Beyond new threats to security from the passing of ocean moats, sailing-ship invasions and agrarian self-sufficiency, other factors have revalued ends six to ten. International events arise, progress and alter their complexion much more rapidly in an era of missiles and instant communications than in one linked by horses, wind and quills. Foreign affairs are also more dense today than ever before. The world's supply of humans, independent states and international bodies has burgeoned, as have their ideological and political differences. Exploding wealth and technology provide these populations with the means to perform feats inconceivable in less endowed ages. As a result, international life has become infinitely more complex, demanding greater attention and sophistication from its manipulators.

Under the circumstances, we do have keener interest in ends six to ten than the Constitutional Fathers. Our concern with group-one objectives, however, also remains intense. Tyranny, aggression or debased democracy in the name of national defense is as unappealing today as it was in 1787–88.

1728

III. Respective Institutional Capabilities of the President and Congress to Realize the Allocational Ends

It is well to fatten the two institutional judgments stated earlier—that the legislative process is better equipped to realize ends two to five, and executive initiative ends six to ten.

A. Ends Two to Five

Tyranny and aggression are more likely prevented if each branch acts as a failsafe against the other's error, incompetence or venality. Each by its independence and unique perspective is well positioned to ward off the other's lapses, and the probability that both will take leave of their senses at once is necessarily less than that of solitary dementia. Admittedly, the separation of powers works most effectively against tyrannical or aggressive action, rather than inaction, but even the latter is less likely if there is one branch ready to prod the other on toward righteousness. Mutual restraint and exhortation are adequately present in the legislative process; it requires the joint approval of the President and Congress unless two-thirds of the House and Senate reject a veto—an improbable majority for tyranny or aggression.

Legislation, by the same token, is the best route to national consensus behind American war or peace action. A congressional act signed by the President, in whose shaping both meaningfully participated, stamps policy with constitutional legitimacy and shows its support by the whole of federal political authority. Further, both branches having assumed responsibility for the action, both have vested interests in selling it to their constituents. Disagreement between the President and Congress, on the other hand, will surely divide the country and cripple contested policy. The Executive moving with regal unity can strike quickly and persuasively for popular backing. But the hosts in Congress, plugging foward in less rapid and dramatic fashion, can riddle presidential consensus and replace it with their own, or with hopeless national schism.

Finally, democratic control inevitably involves both political branches. Each in its own way represents the people. Whether the President or Congress more embodies the national will depends on the issue and the moment. The Executive by virtue of his national constituency is freer of blackmail by special interests, and thus more able to focus on the general good. Congress by its 535 members, smaller electorates, biennial return of the full House and one-third of the Senate, and by its more public decision-making process has greater feel for the popular mind and is more open to public revenge for failure to implement the voters' views. For these reasons also, the public has greater access to legislative than to executive decision-makers. Thus it seems that Congress does bear the heavier burden of ensuring policies responsive to majority will. Accordingly, the legislative process, with its heavy executive involvement but final congressional say, is well suited to achieve end five.

If ends two to five stood alone, *prior* congressional approval for American war-peace action would be an absolute. Historically, these objectives have not stood alone.

B. Ends Six to Ten

The President has the more rational process for making decisions, because of his unity, availability for federal business, control over the services and activities of most federal personnel, and term of office. Unity and time in office enable him to take account of the country's overall foreign policy objectives and priorities. And because he is ever present at the center of the national intelligence network and assisted by countless experts, he is more able to grasp the basic facts of emerging situations, alternatives for dealing with them, and informed evaluations of the costs and benefits of each alternative. Thus, he is well equipped to appreciate the demands of both continuity in policy and its timely revision.

The President's unity and national constituency permit him greater freedom than Congress to take unpopular action, when it appears vital to national security. He shares executive power with no one, and thus is not hobbled by fainthearted colleagues. Nor is he hindered by the violent opposition of one special or geographical interest; his electorate is the country as a whole. Further, the President has come to symbolize the nation during crisis, and thus has immense capacity to preempt the media, seize the flag and rally support for his plunge toward war or peace. And, of course, the Executive's more rational decision-making apparatus often gives him greater confidence than Congress in the necessity for politically risky initiatives.

As a single man always on the job, the President is more able to move swiftly, secretly, flexibly and proportionately. Finally, as the leader of federal personnel and the one charged with interpreting and executing American policy, he has the greater capacity to see to efficient federal action.

Congress is a different story. The multitudes who make up its two houses; their difficulty in assembling, much less acting, with speed and secrecy; their inferior access to federal personnel, and thus to federal information and expertise: the immediacy of their constituents; the flux of biennial elections; and the legislative role of talking and approving rather than doing—all these combine to make Congress a more public and ponderous, fear-

1729

ful and unfocused decision-maker than the President, and one in need of significant external guidance.

Paeans to presidential advantages in achieving ends six to ten can be overdone, however. Growth of executive war powers to their Cold-War apogee was a perfectly natural result of certain institutional and historical forces—a movement along the path of least resistance for both branches and for the country. But not all of these forces relate to national defense, and recent executive hegemony over war and peace can be reduced without threat to end one. To the extent that presidential control of military policy reflects, for example, apotheosis of the Executive as folk hero, his more skillful exploitation of the media than Congress, over-reaction to the uncertainties of world leadership in a nuclear age, and simple habit, it can be cut back without undermining the Republic.

The comparative, not absolute, nature of executive advantage in realizing ends six to ten is apparent on a number of fronts. First, Congress is important to an element of rational decision-making: the necessity for forceful, independent criticism of alternative courses of action. Devils-advocate to the President all too often have modest impact. Not so the advice of powerful senators and representatives, who have the means to negate executive policy. Further, having been involved less, if at all, in the toil of creating presidential proposals, legislators are more able to appreciate their defects. And members of the opposition party, in particular, often feel little compunction about exposing defects as they see them.

Second, Congress may be needed to ensure timely revision of American policy. The Executive can become obsessively fond of initiatives that he sponsored and in which he has invested much political capital. Individual legislators, of course, are subject to similar obsessions, but since there are 535 of them, Congress generally avoids monolithic positions, and rarely lacks a stalwart few willing to describe the emperor's nakedness.

Third, Congress also may be needed to promote federal efficiency. Inefficient as congressional procedures themselves are, legislators frequently have a keen eye for institutional flaws in the executive branch, and they have the capacity to force remedial steps. Further, the President is limited in the institutional reform that he can effect in his branch without congressional approval. Congress does hold ultimate control over raising and organizing virtually all federal personnel, those in the executive department included.

Fourth, if the President falters, the country depends on Congress to press on toward the executive ends. It is the American institution next most capable of realizing them. And, of course, the legislators can improve the ways in which they do business so as to narrow significantly the Executive's comparative advantage over ends six to ten.

C. A Word for Chicken Little

The respective executive and congressional capabilities just described exist in most, not all, cases. Thus, institutional judgments based on them do not take account of the impact that extraordinary personalities on the Hill or in the White House can have on realization of the allocational ends. Should abnormally wise and forceful congressmen face abnormally foolish and weak Executives, the legislative process could become the best hope for ends of both groups. Even with normal Presidents and Congresses, there will be some times when the legislators are more capable of producing objectives six to ten and other instances in which the President alone could do the best job for ends two to five. In short, the sky may occasionally lower on these institutional assessments.

It is *most* cases, however, to which the allocational rules should be responsive. To guard against the worst conceivable performance by the Executive or Congress would require allocations excluding the offending branch from authority. And that, obviously, would leave the country without a first line of defense against the fallibility of the favored branch. Allocational emphasis first on executive ends and then on legislative provides a firm middle ground.

Should the middle ground satisfy devotees of presidential prerogative traumatized by what Congress might have done to President Franklin Roosevelt's use of force against the Axis during the months preceding formal American entry into World War II? Or, on the other hand, should it satisfy devotees of congressional prerogative traumatized by how Presidents Johnson and Nixon buffetted the legislators over Indochina? Very probably not, for their positions rest on certain inescapable dilemmas. Roosevelt, had he been forced candidly to report his Atlantic war to Congress could easily have been directed to pull back, though his action was vital to American defense. And the Johnson-Nixon manipulation of Congress made clear that the legislators can be herded by executive *fait accompli.* In other words, there is no avoiding the fact that, given an opportunity to decide, Congress may make disasterously poor judgments, or the fact that, given an opportunity to shape events before seeking congressional approval, the President may notably narrow the legislators' freedom to decide. But with a cooperative war-power relationship between the two branches, and reasonable good luck, these dilemmas should consume only those who, with Chicken Little, see falling skies in every descending acorn.

·1730·

IV. Presidential-Congressional Prerogatives over American Involvement in Combat

Taking into account (1) the allocational ends, (2) the order of preference among them, and (3) the respective institutional capabilities of the President and Congress to realize these objectives, what interpretation of the Constitution's war-power provisions best serves the country today?

A. Presidential Prerogative when Congress Is Silent

The first of our core issues concerns the scope of executive prerogative over the initiation, conduct and termination of American involvement in combat, when Congress as a whole remains legislatively silent regarding the action. Given congressional silence, the President should be constitutionally free to act, limited only by (1) the necessity to inform the legislators fully of developments on a continuing basis, (2) defensive purpose, and (3) the availability of implementing tools. As a matter of custom but not constitutional obligation, the legislators ought in turn to grant him the tools he requests, so long as they decline squarely to reject his policy by a vote to limit or end it.* These constitutional conclusions bear some elaboration.

When Congress is silent, the phase of action has little practical significance to presidential prerogative. So long as the legislators do not explicitly reject policy adopted by the Executive, and so long as he can lawfully obtain the necessary implementing tools, he ought to control the operation from initiation through conduct and termination.

Along the way, however, the President ought not to be able to withhold from Congress nontactical information about the action. Thus, he should report promptly and in detail at the outset, with supplemental statements periodically thereafter. So informed, Congress would have the necessary information and recurring occasion to debate and vote conditions on, or an end to, our participation in combat, should the legislators so desire. In this manner, the reports would safeguard ends two to five. Further, the President's awareness that he must make full and continuing disclosure would discourage hasty, ill-considered action on his part. And faced with the necessity to report and the possibility of adverse, nonvetoable congressional judgment in return, the President—as a matter of practical politics, not constitutional obligation—could be expected to obtain prior assurance of congressional support except when he feels that (1) unpopular action is essential to national defense, (2) a compelling need for initial speed or secrecy exists, or (3) the costs to the country of the action are likely to be very slight.

To realize allocational end three, the President should never act for aggressive purposes. But it is for him to judge at the outset where defense ends and aggression begins, subject to later review by Congress and the public. The reasons are those already given for initial preference of ends six to ten over ends two to five.

Beyond this requirement of defensive intent, the purpose behind the President's action should have no bearing on his authority when Congress is silent. Attempts to frame "purpose" tests for executive prerogative quickly become lost in trackless wilds. What sorts of attacks, on whom, where, justify what kinds of action by the Executive under a response-to-attack rationale? What sorts of "laws," recognized by whom, support his unilateral resort to arms under the President's duty to take care that the laws be faithfully executed? These and other mysteries would require resolution to produce a purpose test for executive prerogative. Further, if the test were not elaborated in detail, it would risk meaningless ambiguity and bode ill for the rule of law; it might also, as a practical matter, have no limiting effect on presidential discretion. If the test were minutely elaborated, on the other hand, it would risk unduly restraining executive authority; mortals lack the capacity to foresee all the circumstances in which a sudden-attack or law-enforcement rationale will call for executive action to protect the country.

Of course, the more "pure" the President's purpose for acting while Congress is silent, the greater the likelihood that his policy will be supported thereafter by the legislators and voters. Thus, executive response to sudden enemy attack on American territory seems virtually rejection-proof; howls of outrage, rather, would greet presidential inaction pending congressional consent. Not so, for presidential response to covert enemy attack on an exotic land half the world away from America. By the same token, the President will be far more certain of approval when he uses the military to enforce a congressional joint resolution, than when he lands marines to enforce a United Nations resolution.

The need for speed or secrecy should be wholly irrelevant to executive authority when Congress is silent. The dangers of ambiguity, on the one hand, and rigidity, on the other, would accompany speed or secrecy tests for presidential prerogative even more surely than they travel with purpose criteria. It is true, again, however, that the more the circumstances at issue do demand speed or secrecy, the greater the likelihood that solitary executive action

*For congressional prerogative to limit or end executive policy by majority vote in both houses, see pages 91–92 below.

1731

will be hailed by other Americans. When we talk of "emergency," we generally refer to a union of response-to-attack purpose and necessity for speedy or veiled American response.

The costs of action, similarly, ought not to affect executive prerogative, given legislative quiescense. A costs test would pose its own definitional horrors. What sorts of adverse consequences, of what magnitude and immediacy would be compatible with unilateral executive action? But again, the smaller the costs, the more likely executive initiatives are to be tolerated by Congress and the public.

Tools are another matter. The means required to begin and sustain American involvement in combat should affect the President's prerogative. His right to initiate any particular action ought to depend either upon the existence of the necessary men and money, or upon prior congressional delegation to him of authority to raise them for ventures such as that contemplated. Similarly, if international agreements or domestic regulations are required, the President should be able to go only so far as own tool-providing authority can take him. Draft laws, appropriations and the like ought not to fall within his sway merely because they are essential to effect his military policy. Were they to do so, the separation of powers could be irretrivably breached, and Congress denied an ultimate means of restraining a President otherwise impervious to legislative will.

On the other hand, Congress as a matter of comity and sound decision-making ought rarely to deny the Executive tools that he requests, so long as the Senate and House remain silent about the policy for which he requests them. Defeat of policy by denying implementing tools is less likely to realize the allocational ends than defeat of policy by debate and voting focused exclusively on the merits of the action in question. In short, congressional use of tools to hamstring executive policy ought to be abnormal—arising only when an Executive fails to accede to direct congressional decisions about policy. A hamstringing use of tools, of course, may be more frequent during a transition in which Congress learns to deal squarely with policy and the Executive to honor its judgments.

The presidential prerogative just sketched assumes that Congress should have no constitutional right in the late twentieth century to approve all American involvement in combat *before* its initiation. Neither the rule of law nor end one—national defense—would profit from an attempt to carve executive exceptions out of a general requirement of prior congressional approval; the definitional ambiguities or rigidities of (a) purpose, (b) speed or secrecy, or (c) costs criteria for such exceptions have already been noted. More important, the President's comparative advantage in realizing ends six to ten, and his capacity to go far toward ends two to five by himself, support his action without prior congressional consent.

They also support the Executive's continued control until the legislators explicitly limit or reject his policy—or, in rare cases, simply cut off necessary tools. Thus, the presidential prerogative just sketched assumes that Congress should have no constitutional right to kill ongoing executive action simply by failing to ratify it—for instance, by failing to vote approval within 60 days after its beginning, or by failing to vote yes at set intervals thereafter. Congressional failure to ratify executive action, whether because no vote at all is taken or because no resolution of approval passes, cannot be automatically equated with rejection of the President's policy; instead, it may reflect confusion, political cowardice, or minority machinations. Nor can congressional failure to ratify realistically be thought as rational a decision on the merits as the President's affirmative judgment. Thus, pending such time as Congress squarely votes to condition or end executive war-peace policy, we are more likely to realize the allocational ends by allowing it to continue.

This conclusion is reinforced by likely disadvantages of a fixed period for ratification, with automatic termination if Congress fails to vote yes. American adversaries could not help but have their resistance on the field and at the negotiating table strengthened by hope that the period would end with American withdrawal. Similarly, the President could not help but push events more vigorously than he might otherwise, if he believes national defense at stake and Congress loathe to meet its demands. It makes no difference whether the adversary or President correctly perceives what Congress is likely to do; both will respond to reality as they see it, and their perception may be dangerously skewed by the existence of a deadline for ratification. Nor is it a wholly satisfactory solution to have Congress quickly take a position, or extend its period for decision. The objective is informed, focused action by the legislators as soon as, but not before, they are prepared to vote their independent judgment on American policy.

B. Prerogatives at Armageddon: Congress and President Disagree

The second of our core issues concerns the scope of congressional and executive prerogative over the initiation, conduct and termination of American involvement in combat, when the two branches disagree about the proper national course. When congressional and presidential prerogatives come to Armageddon, the Executive ought to retain the right to initiate military action, so long as that action has not yet been forbidden by law. If the Presi-

1732

dent moves unilaterally, he must then promptly report his action to Congress and accept its limitation or end by majority vote in both houses. Congress, further, should be able to compel the President to take military action he opposes, by two-thirds vote over his veto.

1. The Phase of Action

Phase becomes crucial to the allocation of control when the two branches disagree.

a. Initiation—Initiation presents three allocational situations. First, the President should have authority to begin action so long as Congress has not yet voted against it, even if such a vote seems imminent. In other words, until the legislators take a formal position, the Executive ought to retain his prerogative when Congress is silent. Under that prerogative, however, he must promptly report his action to Congress, which can then condition or end it by concurrent resolution. Presumably the President would act despite rising congressional sentiment only to advance policies he feels vital to national defense, especially when speed or secrecy is crucial to their success. The Executive would hope by his *fait accompli* to buy time to win the legislators to his view—through the persuasive force of events and his appeals to public opinion. Why allow the President this option? Because of the contemporary importance of ends six to ten and his comparative advantage in realizing them.

Second, before the President initiates action, Congress should have the power to prevent its ever beginning, or to condition its nature. The prohibition or limits ought to come from an explicit vote to block or bound the action, not from simple failure to vote for a resolution authorizing it. Further, if the President vetoes the negative legislation, two-thirds of both houses must renew the ban, or the Executive should retain his right to act unilaterally, subject thereafter to prompt report and nonvetoable decision by Congress. If, however, his veto is overridden, the Executive should not proceed with the proscribed action. Ends four and five—consensus and democratic control—then demand acceptance of the judgment of the legislative process. The President can, of course, attempt immediately to persuade the legislators to repeal their negative.

Third, when the President favors doing nothing at all, Congress should have the right to pass legislation directing him to cease inaction and commit troops. Beyond the qualified absolute of his veto, the President should have no prerogative to refuse to heed congressional will. He ought not to be able to preclude American involvement in combat simply because he opposes it. Were he able to disregard congressional rejection of his veto in such cases, the legislators would have no recourse but impeachment to overcome the military default of a venal or incompetent Executive—an unwieldy and sluggish remedy, especially when speed may be of the essence. Far better for Congress to have the constitutional right to order military action begun. Faced with such a directive, a venal President may be moved to virtue and an incompetent to wisdom; even if the President refuses to act, other federal officials could do so under the constitutional shelter of the congressional order.

b. Conduct—No matter how action is initiated, the President should control its conduct, so long as he stays within any conditions laid down by Congress. Speed and secrecy when necessary, flexibility, proportionality and efficiency always—all call for one executive, not 535. The difficult question is where to separate conditions on the nature of an action, which Congress may define, from strategy and tactics, the prerogative of the commander-in-chief at all times. No bright lines exist. Broadly, however, Congress ought to be able to state (1) the underlying objectives of any American involvement in combat, (2) the length of time it may continue, (3) the place for its conduct, (4) ceilings on the men and money to be committed, and (5) whether nonconventional weapons may be used. How within those conditions the action is to be conducted then becomes a matter for executive discretion.

To set aside congressional conditions the President should be required to obtain majority vote of both houses. But to the extent that Congress has not specified groundrules for the action, he should be free to set them, under the terms of his prerogative to control policy when Congress is silent. For example, if the legislators have said nothing about the precise geography of American participation in a foreign conflict, the President should be free to expand its territorial scope, so long as he reports his action to Congress and stands ready to have it conditioned or ended by majority vote of both houses.

c. Termination—To impose conditions or put an end to ongoing action, two different allocations of authority are desirable. First, if the President began the action by himself, Congress should be free to limit or terminate it by majority vote of both houses, without the possibility of executive veto—no matter how acute presidential distress at the passing of his policy. Why permit Congress to work its will by concurrent resolution? Because, as we have seen, concern for ends two to five requires that the legislative process take control of war-power action, once ends six to ten have been given an initial boost by unilateral executive action. And the legislative process, after the President has "signed" policy by initiating it, runs in reverse. It needs only the legislators' judgment. There is no place for executive veto; for, when the legislative process operates normally, congressional failure to vote approval results in no bill, in nothing for the President

1733

to veto. In fact, when the legislative process runs forward rather than backward, the lack of a majority in *either* the House or the Senate proves fatal to presidential policy. In the interests of ends six to ten, however, majorities in both houses ought to be required before an executive use of the military is conditioned or ended.

Second, if the President began action only because Congress so required, he should be free to end it when he believes that the congressional objectives have been reached, unless ordered to continue by two-thirds vote of both houses, over his veto. Why? Again, because it is well to have a less extreme mechanism than impeachment to move a venal or incompetent Executive, or his subordinates, to necessary military action.

What if an initially reluctant President develops a taste for action forced on him by Congress, and wishes to continue it despite a contrary majority in the Senate and House? There is no reason to deny the Executive his veto in this instance, since the legislative process has not run in reverse. Thus, a two-thirds vote ought to be required to restrain him. As a practical matter, however, simple majorities in both houses can usually force termination in such a case by refusing to approve tools vital to the action.

2. Purpose, Costs, Need for Speed or Secrecy, and Tools

The purpose for American involvement in combat ought to be irrelevant to executive-congressional prerogative at Armageddon. Thus, the President ought not to be free to fight on endlessly simply because he is defending American territory against enemy attack, or simply because he is enforcing an order of the United Nations Security Council. In the first instance, Congress may believe surrender the best means of preserving what remains of the country; such a decision has proved fruitful for many enemies of the United States. In the second instance, Congress may believe that the costs of collective security for this country outweigh the benefits—even though among the costs is default on its international obligations.

By the same token, the costs of action should be irrelevant, as well as its need for speed or secrecy. Modest costs support executive prerogative only on the assumption that Congress is uninterested in acting on so slight a matter. Any demands of speed or secrecy will have been met by Congress, happily or unhappily, once it has acted on the pending question. The President, accordingly, can hardly argue in the face of the legislators' vote that the pertinent costs are too minor to interest them, that there is too little time to seek their opinion, or that doing so might breach vital confidentiality.

Tools, to the contrary, do provide a second front on which the two branches can further wage their policy disputes. An end to this second front, by consolidating control over all tools in one or the other branch, would not be desirable. Tools provide bedrock checks and balances to prevent evil or foolish action by a branch holding policy authority, and to prevent one branch from usurping the other's legitimate voice in decision-making. Arguably only Congress has tools available as checks and balances, since the President must use his to take care that laws be faithfully executed, even laws enacted despite his veto. But little practical difference exists between congressional refusal to produce its tools and the President's use of his. Further, the need for executive restraint of Congress exists, as well as the obverse; two-thirds of both houses, for instance, could order military action with disasterous potential.

But again, by custom, tools should be used to derail policy only *in extremis*. Their hamstringing use is not conducive to a spirit of cooperation between the President and Congress. Nor does it usually provide as informed decision-making as does exclusive focus on the policy merits and their explicit resolution.

V. War-Power Legislation

A. Desirable in Concept

Legislation to implement executive and congressional war powers has merit on several scores. First, it might provide the thrust necessary to break both branches out of the gravitational pull of executive hegemony over American war and peace, the norm since 1945. Without action-forcing legislation and with the dimming of Indochina passions, it is easy to envisage continued presidential control, mildly rocked by congressional rhetoric and occasionally, if rarely, upset by legislative curbs on war appropriations.*

Second, the legislation could push the President and Congress into genuine collaboration on use-of-force policy from its beginning to end. While the relations between the two branches actually governed by a war-power statute might be quite narrow, perhaps concerning only twelfth-hour decisions, these relations could foster broader communication. Faced with a twelfth-hour necessity to report and defend his policy, the President would become more eager to involve Congress in its planning and prior approval. Faced with an explicit opportunity to vote yes or no on twelfth-hour

*The latter reached unprecedented heights during the Indochina War. The fact that Congress finally forced a President to end American participation in conflict, by cutting off tools vital to it, may prove a more potent influence on future war-power struggles between the two branches than institutional legislation of the sort considered here.

1734

policy, and thus to share responsibility for it, the legislators would become more concerned to participate in shaping first through tenth-hour decisions, lest they be confronted at the last minute with alternatives not at all of their choosing. Both branches, in short, would have new enthusiasm for building and maintaining collaborative bridges at all times.

Third, war-power legislation could itself provide a limited means for rationalizing congressional ways of handling foreign and military affairs, for instance, by establishing procedures for expedited congressional decision-making. And, it should encourage the legislators to move broadly to reform their methods for dealing with American use of force.

Fourth, war-power legislation might effectively spark the development of constitutional consensus about the war powers. That consensus is vital to clear, enforceable allocational rules, and thus important to the well-being of the rule of law in this country.

Fifth, war-power legislation ought to encourage courts to enter the allocational arena. Given a statute to apply, judges would have greater difficulty avoiding use-of-force cases on the ground that they pose nonjusticiable political questions. Much blood has flowed in scholarly and courtroom debate over whether courts ought to intervene in war-power disputes. Grossly stated, however, it seems that intervention would carry greater benefits for the country than costs; the contribution of judicial decision to a clear, enforceable constitutional regime for the war powers would outweigh any indirect burdens of such decision, for instance, brief interference with presidential foreign policy.

Against these putative benefits, war-power legislation also carries significant risks. If it proves meaningless—ignored by the President and unenforced by Congress or the courts—better that the measure have never been passed. Spurned, it would further seal legislative irrelevance to American war and peace, providing a very public rejection of the congressional claim to be heard in use-of-force policy. Disregard of the legislation, moreover, would do nothing helpful for the rule of law.

The legislation, moreover, could divert Congress' attention from the roots of its recent war-peace impotence: its fragmented, ill-informed, sluggish ways of doing business; its refusal to use existing authority—for example, to oversee, investigate, appropriate, legislate, advise and consent—to cajole and coerce the Executive into meaningful collaboration from the first hour; and its reluctance to vote yea or nay on war-peace issues at formative times.

Finally, war-power legislation would be harmful if its terms were such as to breed unrelenting controversy between the President and Congress over the act's constitutionality. Similarly, the legislation would be regrettable if its terms needlessly expanded or dangerously restricted the President's discretion to use American troops as he thinks crucial to national defense.

B. Authority under the Necessary and Proper Clause

At the threshold, does Congress have constitutional authority to pass a war-power act? Yes, because the Constitution's necessary and proper clause permits legislation that reiterates constitutional requirements and defines procedures for their implementation. Congress' authority to reiterate the requirements, however, is far narrower than its power to define how they are to be implemented. Thus, no congressional discretion exists concerning the nature of the constitutional requirements, for example, when the President may commit troops without prior congressional approval; so far as the necessary and proper clause is concerned, Congress' only option is to reiterate the Constitution, elaborating perhaps but not changing it. Wide legislative discretion exists, on the other hand, over the choice of means; the President can be ordered to give up old methods of implementation (for instance, episodic, often untimely reporting of troop commitments) and adopt new ones (systematic, prompt reporting).

The legislators do have some leeway with respect to the nature of the war-power requirements, however; it comes from the same source as the President's: uncertainty as to what the Constitution means. Gaps in the text, its vague terms, competing grants—these and other factors provide room for argument. The more uncertain the Constitution, the more difficult it is to sort out means for implementing it, which Congress has discretion to choose, from the constitutional requirements, which Congress has no more authority than the President to define. War-power legislation simply requiring the President to report his commitment of troops to combat seems to involve means alone. But such legislation moves heavily toward constitutional definition if it orders the President to end his use of force within a certain time, unless majorities in both houses pass an authorizing resolution; or if it requires prior congressional approval for American use of force, except on limited occasions defined in the act.

Once war-power legislation moves beyond means to definition, it has no more right to automatic acceptance by the President than his constitutional claims have to automatic acceptance by Congress. If the President signs the act nonetheless, he concedes its claims, thus opening the way to consti-

1735

tutional consensus. If he vetoes the act and is upheld, no law formally exists; but the Executive may find it prudent to accede voluntarily to many of the would-be requirements, and the legislators will have a concrete notion of the allocational role they think constitutionally theirs. If the President's veto is overridden, he may still refuse to acknowledge the statute, terming it unconstitutional—unless the Supreme Court holds otherwise. Prudence, however, will dictate even more strongly his *de facto* acceptance of its requirements, and the legislators will be even more confident of their role. On the other hand, should the legislation strongly contravene the President's view of his constitutional prerogative and of the national good, he may cast prudence to the winds; and he almost surely will obey only the letter of the legislation, construing its text as favorably for executive discretion as conceivable.

The fact remains that war-power legislation is most likely to foster a clear, enforceable allocation of war powers if it is formally accepted by the President. Thus, if there are a few basics on which the two branches can agree, the legislation is well limited to them. From such an elemental act, more general constitutional consensus can evolve over time. This was not, however, the route taken by recent war-power legislation, enacted over presidential veto. Whether this "War Powers Resolution" will prove constitutionally viable cannot yet be accurately told. It is useful to turn to its details.

C. 1973 War Powers Resolution

The extreme executive prerogative claimed by President Nixon in Indochina, particularly during his 1970 Cambodian incursion, incited Congress to institutional legislation on the war powers. Not until October 1973, however, were the Senate and House able to agree on a common measure. It, in turn, elicited a veto on the grounds that "the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation." The legislators—equally, if contradictorily, assured that their measure was constitutional and benign—overrode the President on November 7, 1973, producing Public Law 93–148.

1. Reiteration of the Constitutional Requirements

Congress in its 1973 War Powers Resolution reads the Constitution as subjecting all American involvement in combat* to legislative control, except perhaps for hostilities on American territory. Thus under § 5(b) of the Resolution, the absence of congressional approval for such involvement compels its end after 60 days, unless Congress extends the deadline, is unable to meet in the wake of armed attack on America, or the President obtains 30 more days of grace by certifying in writing that our troops' safety requires their continued use during the withdrawal process.** And under § 5(c),

> at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if Congress so directs by concurrent resolution.

In short, Congress claims that the President may not constitutionally commit our forces against those of another state, except possibly on American territory, unless the legislators either explicitly authorize combat in advance or ratify it within a set time after its beginning.*** Further, Congress asserts that no veto is constitutionally permissible when the legislative process runs in reverse, that is, when the President commits troops without prior

*The Resolution also deals with congressional-executive consultation about hostilities, as well as with executive deployment and stationing of troops abroad. Provisions on these matters, however, do not limit the President's freedom of action, except as it may be indirectly impaired by exchanging views with Congress and by providing the legislators with information.

**Section 5(b) provides:

> Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a) (1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

***The Resolution seems unconcerned with shots fired at foreign mobs, international criminals or the like. *See, e.g.*, the June 15, 1973 Committee on Foreign Affairs report: "The term 'war powers' may be taken to mean the authority inherent in national sovereignties to declare, conduct, and conclude armed hostilities with other states." But so long as another nation is the adversary, Congress appears to have defined "hostilities" broadly; according to the same report: "In addition to a situation in which fighting has begun, *hostilities* also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. *Imminent hostilities* denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict." And Congress made explicit in the Resolution that the President is not lightly to infer legislative authority to enter hostilities. Section 8(a) forbids such inference "(1) from any provision of law . . . unless such provision specifically authorizes [the commitment] . . . and states that it is intended to constitute specific statutory authorization within the meaning of this resolution; or (2) from any treaty . . . unless such treaty is implemented by legislation specifically authorizing [the commitment] . . . and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution."

1736

congressional authorization. In that event, § 5(b) permits either the House or Senate to terminate executive policy simply by failing to ratify it before the statutory deadline, and § 5(c) permits majorities in both houses to abrogate the policy at any time by concurrent resolution.

Having claimed legislative control over American involvement in combat, Congress goes on to read the Constitution as requiring *prior* legislative approval for such involvement except on two occasions. Thus § 2(c):

> The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

In the legislators' view, the President on his own authority may constitutionally commit us to combat simply to repel an attack on American territory or on our troops abroad.*

Congress nailed this constitutional position tighter in § 8(d) (2), indicating:

> Nothing in this joint resolution . . . shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein an involvement in hostilities is clearly indicated by the circumstances, which authority he would not have had in the absence of this joint resolution.

And the legislators apparently hope to force the President either to accept their reading of the Constitution in § 2(c), openly defy it, or to plead *mea culpa;* for, § 4(a) (B) demands that he explain to Congress "the constitutional . . . authority" for any commitment of troops to combat, should he do so without prior legislative approval.

How do the constitutional conclusions of the 1973 War Powers Resolution stand in relation to those reached earlier in this paper? The Resolution's judgment that American involvement in combat is ultimately subject to legislative control seems sound for reasons developed at length earlier. Similarly sound is the Resolution's proviso for congressional judgment of presidential initiatives by concurrent resolution, again for reasons already noted.

But the Resolution's apparent distinction between combat on American territory and abroad lacks merit; in both instances, as suggested previously, Congress should have authority to condition or terminate unilateral executive war-making. Nor does the Resolution indicate with sufficient clarity that Congress may condition, as well as terminate, executive policy. The distinction between an absolute congressional ban on American involvement in combat and the imposition of congressional conditions on it has already been noted; its explicit expression in war-power legislation is important to avoid presidential pretense that conditions are nothing more than strategy or tactics.

The Resolution's assumption that Congress must explicitly approve executive use of force, if the use is to be constitutional, has little to be said for it. Defects in such a notion, especially one buttressed by a deadline for ratification, have been detailed earlier.

By the same token, the draconian limits on presidential discretion to commit troops without prior congressional approval, stated in § 2(c), have scant merit. Under this section's formulation, Presidents could never, on their own authority, direct American troops to confront those of another state in order to protect American civilians or property attacked abroad, to assist international peacekeeping or humanitarian rescue, to defend the territorial integrity of Mexico against foreign attack, and the like.

Section 2(c) is untenably narrow. It is most unlikely that Presidents will heed it. And, while the union of §§ 2(c), 4(a) (B), and 8(d) (2), described earlier, suggests that the legislators mean their niggardly reading of presidential discretion to govern American practice, other evidence exists that this is not truly congressional intent. Thus, the October 4, 1973 "Joint Explanatory Statement of the Committee of Conference" hedged:

> Section 2(c) is a statement of the authority of the Commander-in-Chief respecting the introduction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances. Subsequent sections of the joint resolution are not dependent upon the language of this subsection, as was the case with a similar provision of the Senate bill (section 3).

Significantly, though ironically, the Resolution was opposed by a few of the more vigorous proponents of congressional prerogative on the ground that it provides a blank check for presidential war-making.

To the extent that § 2(c) lacks binding effect, its unduly restrictive view of presidential authority is softened. But, to precisely that same extent, the legislation takes on a quixotic air, detrimental to the

*Section 8(c) further narrows the meager § 2(c) discretion given the President by its broad definition of "introduction of United States Armed Forces" to include "the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities."

137.

rule of law. Clear, enforceable constitutional rules, as well as war-power ends discussed earlier, would have been better served had Congress forgone § 2(c).

2. Definition of Implementing Procedures

How does the 1973 War Powers Resolution seek to implement Congress' view of the constitutional requirements? As just noted, it takes only modest steps toward implementing § 2(c)'s broad reading of when prior congressional approval is necessary before the President may constitutionally commit American troops to combat. The Resolution is far more thorough about obtaining information from, and consultation with, the President, and about focused, expedited congressional action on the particulars of any use of force.

a. Information—Responsible legislative action on war-peace issues requires the timely receipt by Congress of pertinent information, much of it from the President. Matters relevant to his reporting include what sorts of circumstances require a report, how rapidly it must be made, its content, whether it is to be periodically updated, and the mechanics for laying it before the various legislators.

Sections 4 and 5(a) of the Resolution deal with these matters:

> Sec. 4(a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—
>
> (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
>
> (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or
>
> (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation:
>
> the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—
>
> (A) the circumstances necessitating the introduction of United States Armed Forces;
>
> (B) the constitutional and legislative authority under which such introduction took place; and
>
> (C) the estimated scope and duration of the hostilities or involvement.
>
> (b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.
>
> (c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.
>
> Sec. 5(a) Each report submitted pursuant to section 4(a) (1) shall be transmitted to the Speaker . . . and to the President pro tempore . . . on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker . . . and the President pro tempore . . . if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

The implementing provisos of §§ 4 and 5(a) are basically sound, with several reservations. First, there is no reason for § 4(a) to dispense with a presidential report if Congress has declared war, while requiring one if Congress has previously authorized the use of force by legislation other than a formal declaration. Given the stringent requirements of § 8(a), noted previously, prior legislative approval of American involvement in combat should be explicit through either route.

Similarly, no magic adheres in § 4(a)'s 48-hour deadline for presidential reporting. The House of Representatives, for example, had previously opted for 72 hours and before that for "promptly." The adverb would have been preferable. Realistic rules for speed are difficult to codify. As a practical matter, there is less need for rapid information on insignificant presidential initiatives than on significant, and there may be instances of major action when the President cannot handle simultaneously both the crisis and meaningful reporting. With common sense and a case-by-case approach, the two branches should be able to develop viable guidelines, perhaps revolving around a 48-hour norm for production of reports, but not around a 48-hour absolute.

As regards § 4(a) (A-C), a more particularized statement of content would be desirable: for instance, one requiring that the President set forth (1)

1738

the precise objectives of his action, (2) the American personnel, money and other resources committed to it, (3) the geographical areas affected by the action, (4) the length of time that particular resources have been committed to particular areas, and (5) projection of future developments regarding each of the above. To the extent that any of this information might aid the enemy, it could be submitted and received in confidence.

Section 4(a) (B) poses problems. As already suggested, its requirement that the President state "the constitutional . . . authority" under which he acted seems designed either to force him to accept the niggardly reading of his authority in § 2(c), to defy it openly, or to admit guilt for having transgressed it. The requirement that he state "the legislative authority" under which he acted, if any, presumably refers to statutory approval other than declarations of war, since no report is required under the latter; thus this proviso renews the needless dichotomy between the two just noted. There would be merit, however, in requesting the President to justify his action under international law, including treaties. The extent to which the action is or is not legal under that law, of course, is an element Congress must weigh in determining whether the action's costs to the country outweigh its benefits.

Section 4(b) is little more than hortatory, since it fails to deal with the extent to which the President in the exercise of *his* constitutional war powers is entitled to withhold information from the legislators. If the Resolution means to suggest that the President has no such right, even as to strategic and tactical data, it strays.

Periodic reporting by the President during any ongoing use of force, as required by § 4(c), is essential to ensure that Congress retains the means for informed decision-making and to ensure that the legislators are presented with recurrent, explicit occasions to act. Whatever the content requirements for the intitial presidential report, supplemental reports should update all pertinent categories.

Section 5(a) provides apt means for laying the facts of American involvement in combat before those congressional committees most competent to deal with them, and apt means for bringing the legislators as a whole together, if they are out of session when crisis develops *and* the circumstances warrant their immediate consideration of the President's action.

The Resolution does not deal with secret reporting, but its terms implicitly accommodate it. Nothing is said, for instance, about automatic disclosure of the President's report in whole to all members of Congress, and certainly nothing is said about its automatic disclosure to the public. If the President is, in fact, to report meaningfully in all the circumstances covered by § 4(a), he must have reasonable confidence that secrets told Congress will remain secret. On the other hand, the legislators must be assured that vital information is not withheld from them simply because it undercuts executive desires; and Congress cannot be bound to keep presidential secrets when it believes public awareness of them is crucial to the national interest. Most of these difficulties could be met by a constructive relationship between the Executive, on the one hand, and the Speaker, President pro tempore, Foreign Relations and Foreign Affairs Committees, on the other. It ought to be possible for these legislators to receive and keep information in confidence, until the President agrees to its disclosure to the rest of Congress or until a majority of both committees so vote.

b. Consultation—Beyond obtaining crucial information, Congress seeks to implement legislative control over our involvement in combat by demanding that the President exchange views with the legislators and seek their advice about *all* American uses of force, except when circumstances utterly preclude consultation. Thus § 3 states:

> The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

The June 15, 1973 Committee on Foreign Affairs report explained that "consultation" is a meaty process:

> Rejected was the notion that consultation should be synonymous with merely being informed. Rather, consultation in this provision means that decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated. Furthermore, for consultation to be meaningful, the President himself must participate and all information relative to the situation must be made available.

Meaningful collaboration between the two branches concerning American war-peace policy, from the first through the twelfth hours, constitutes the millenium. Section 3 seeks it. The section by itself, however, does little more than exhort, unless it is implemented by growing congressional capacity for coordinated, informed, timely decision-making, by greater congressional will to take and assume responsibility for war-peace decisions, and by heightened congressional zeal to use all available raw power to cajole and coerce the President into consultation.

c. Focused, Expedited Congressional Decision-Making—

1739

We have already seen how § 5 ends presidential policy when (1) the House or Senate fails to ratify it within 60 days, subject to certain exceptions, or (2) Congress at any point votes it down by concurrent resolution. As is true of much of the other implementing detail in the Resolution, there is nothing talismanic about the 60 days; they were born of the House's preference for 120 and the Senate's for 30, and many have disagreed about the likely effect of any particular time period. Devotees of congressional prerogative differ, for example, some finding 30 days essential lest the President have time to lock Congress into his policy by *fait accompli*, others fearing 30 days would allow the President to win rally-round-the-flag support. But whatever the time period, it does encourage focused, expedited congressional attention to the issue at hand. Similar encouragement comes from the proviso for congressional judgment at any time by concurrent resolution. In short, § 5, coupled with the reporting requirements just considered, leaves Congress no excuse for not dealing directly with American war-peace policy if it wishes to.

It is well to note, however, that the 60-day deadline does more harm than good, for reasons already discussed. The sole purpose of § 6 of the Resolution, in fact, seems to be to lessen the possibility that the deadline will arrive without the legislators' having voted yea or nay. But the provisions of § 6 do not guarantee a definitive vote, because it can be blocked if either house "shall otherwise determine by the yeas and nays."

Section 7 of the Resolution deals with expediting procedures not tied to the 60-day deadline, but related rather to the § 5(c) proviso for congressional decision by concurrent resolution at any time. The § 7 procedures constitute a significant step toward rationalizing Congress' handling of foreign and military affairs. These provisions ensure prompt but not precipitate action in the respective foreign relations committees, on the floor of each house, and in congressional conference deliberations—so long as majorities in each house believe that rapid action is desirable. When a majority in either house does not find it necessary, the pace slows. Thus, § 7 is likely to achieve an element essential to a responsible role for Congress in war-peace decisions: an end to obstruction of legislative judgment on presidential initiatives. Like much, though not all, of the 1973 War Powers Resolution, these expediting provisions contribute constructively to the constitutional division of war-peace authority between the President and Congress.

1740

Treaties and International Agreements Other Than Treaties: Constitutional Allocation of Power and Responsibility Among the President, the House of Representatives, and the Senate*

John F. Murphy**
June 1974

Largely as a result of the controversy over the war in Vietnam, considerable attention and debate have centered on the constitutional aspects of foreign affairs, especially the Constitution's allocation of power and responsibility in the conduct of foreign affairs among the President, the House of Representatives, and the Senate.[1] An important component of the debate has involved issues concerning the division of authority in the international agreement-making process among the President and the two Houses of Congress.[2] A number of recent developments have put these issues into sharp focus and deserve discussion and analysis. The purpose of this Article is to consider these developments, as well as the issues they have raised, in light of the Constitution and requirements for an effective foreign policy. To this end, the Article examines such issues as the scope of the President's independent authority to conclude international agreements, the authority of the President and Congress to combine their powers and conclude so-called congressional-executive agreements in place of treaties and the extent to which such agreements are interchangeable with treaties in domestic and international legal effect, and past and present efforts to resolve these problems in the form of legislation and other, more informal, procedures. Finally, the Article attempts an appraisal, in light of constitutional law and policy, of the present international agreement-making roles of the President and the two Houses of Congress, and sets forth proposals for possible reforms in this area.

Before turning to a brief examination of the background to the dispute, an introductory discussion

*Reprinted with the kind permission of the *University of Kansas Law Review*, Vol. 23, 1975. pp. 221–248. This Article is an updated and expanded version of a paper delivered on June 18, 1974, to a panel session of the Commission on the Organization of the Government for the Conduct of Foreign Policy. The author wishes to express his appreciation to William B. Spong, Jr., General Counsel to the Commission, for inviting him to participate in the panel discussion and for granting permission to revise the paper into article form.

A debt of gratitude is also owed to Francis O. Wilcox, Executive Director of the Commission and Chairman of a Panel on the Constitution and the Conduct of Foreign Policy, established by the American Society of International Law, and to the many active members of the Panel. The thoughtful commentary of all these persons has helped immeasurably in preparing this article. Responsibility for the views expressed, however, is the author's.

**Member of the Kansas and Washington, D.C., Bars. Associate Dean and Professor of Law, University of Kansas. B.A. 1959, LL.B. 1962, Cornell University.

[1] *See, e.g.*, L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION (1972); F. WILCOX, CONGRESS, THE EXECUTIVE AND FOREIGN POLICY (1971).

[2] For recent discussions of some of these issues see Berger, *The Presidential Monopoly of Foreign Relations*, 71 MICH. L. REV. 1 (1972); Murphy, *Ruminations on the Roles of Congress and the Executive Branch in the Making of Mutual Security Agreements*, 7 TEXAS INT'L L.J. 345 (1972).

1741

of terminology in an effort to clarify basic concepts seems in order. Specifically, it may be helpful to distinguish between use of the term "treaty" in international law and practice and its use under the United States Constitution. According to the recently concluded Vienna Convention on the Law of Treaties, a treaty "means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[3] In international practice agreements are given various designations, such as treaties, conventions, acts, general acts, protocols, agreements, modi vivendi, etc.[4] But the juridical effect of a treaty is not dependent upon the name given to the agreement.[5]

Under United States constitutional law and practice a treaty has a more restricted meaning. That is, the term "treaty" is applied only to international agreements, however denominated, that become binding upon the United States through ratification by the President with the advice and consent of the Senate through a two-thirds vote of that body.[6] As to the classification of international agreements other than treaties, there has been much confusion in terminology, and the situation is presently in flux. Traditionally, the term "executive agreement," which is not employed in international practice, has been used for domestic purposes to describe all international agreements that become binding upon the United States in ways other than by the ratification of the President with the advice and consent of the Senate. Executive agreements in turn have been classified into several categories. These include (1) so-called presidential agreements, *i.e.* self-executing agreements made in accordance with the President's independent constitutional powers and not dependent upon subsequent congressional legislation for implementation; (2) non-self-executing agreements made subject to implementating legislation by Congress; (3) agreements made pursuant to or in accordance with existing legislation or a treaty; and (4) agreements made subject to subsequent congressional approval by majority vote of both houses of Congress.[7]

It has been said that it is confusing and misleading to apply the term "executive agreement" to all these categories of international agreements, because the term implies that only presidential power is involved when in fact both the power of the President and of Congress may be brought to bear.[8] In order to obviate this confusion, it has been suggested that international agreements other than treaties be classified into two broad categories—presidential agreements and congressional-executive agreements. Under this classification presidential agreements include only those international agreements made solely on the basis of the constitutional authority of the President; congressional-executive agreements cover all international agreements entered into under the combined powers of the President and of Congress.[9]

At this writing the Department of State has under consideration a revision of its Circular 175 procedures concerning treaties and international agreements.[10] Under the latest version of this revision the term "executive agreement" would be used to refer only to "agreements made solely on the basis of the constitutional authority of the President." [11] Other international agreements other than treaties would be categorized as either agreements concluded by the President pursuant to authorization contained in a treaty [12] or agreements concluded by the President "on the basis of existing legislation or subject to legislation to be enacted by the Congress." [13] In this Article the Department of State's more limited definition of an executive agreement will be followed. "Congressional-executive agreements" will be used to refer to international agreements other than treaties concluded pursuant to prior congressional authorization, subject to subsequent congressional approval, or in accordance with treaty provisions. "International agreements other than treaties" will be employed to refer generally to international agreements concluded on some constitutional basis other than ratification by the President with the advice and consent of the Senate.

As is well known, international agreements other

[3]Article 2(1)(a) of the Vienna Convention on the Law of Treaties. U.N. Doc. A/CONF. 39/27 May 23, 1969. The text of the Convention may be found in 63 AM. J. INT'L L. 875 (1969).

[4]5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 1 (1943).

[5]Article 4, *Draft Convention on the Law of Treaties, Harvard Research in International Law*, 29 AM. J. INT'L L. SUPP. 710 (1935).

[6]U.S. CONST. art. II, § 2, cl. 2.

[7]*See* Department of State, 11 FOREIGN AFFAIRS MANUAL §§ 700, 722 (1969). *See generally* 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 193 (1970).

[8]E. BYRD, TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES 148 (1960).

[9]*Id.* at 149.

[10]The presently operative Circular 175 procedures may be found in 11 FOREIGN AFFAIRS MANUAL §§ 700 *et seq.* (1969), and in 50 AM. J. INT'L L. 784 (1956). On June 15, 1973, by way of "Notice of Proposed Rulemaking," the Department of State published a draft revision of its Circular 175 procedures and requested comments from the public. 38 Fed. Reg. 22084 (1973). However, by notice of August 16, 1974, the Department canceled its draft revision of August 15, 1973, and announced that it had substituted a new draft of its Circular 175 procedures. 39 Fed. Reg. 29604 (1974). The notice did not include a copy of this latest revision, referring persons interested in obtaining copies to the Assistant Secretary, Bureau of Public Affairs, Department of State. The August 16, 1974, draft Circular 175 procedures is hereinafter cited as Circular 175, 1974 Version.

[11]Circular 175, 1974 Version § 721.2(b).

[12]*Id.* § 721.2(b) (i).

[13]*Id.* § 721.2(b)(ii).

1742

than treaties, however classified, have been used by the United States with increasing frequency in place of the treaty. For example, in 1930, 25 treaties and only nine international agreements other than treaties were concluded.[14] As of January 1, 1972, the total number of treaties and other international agreements in force for the United States was 5,306, consisting of 947 treaties and 4,359 international agreements other than treaties.[15] According to the Department of State, most of these international agreements other than treaties—approximately 97 percent of them—fall into the congressional-executive agreement category, while only two to three percent are classified as executive agreements.[16] It is these two to three percent, however, that have been the object of the sharpest criticism on the ground that they violate constitutional law and policy. Before examining the validity of this criticism, the background to the present dispute will be briefly considered. No attempt will be made to review the lengthy history of the use of executive agreements.[17] Rather, the focus will be on recent developments that have generated heated debate.

I. Brief Background

As part of an overall review of the roles of Congress and the President in the conduct of foreign policy, the Senate Committee on Foreign Relations has been concerned with what Senator Fulbright has described as the "shabby use of the treaty making process." [18] In early 1967 the Committee held hearings to examine United States security commitments and agreements around the world.[19] On the basis of these hearings the Committee concluded that the traditional distinction between use of the treaty for making significant political agreements and use of the executive agreement for routine, non-political arrangements had substantially broken down and that the interpretation of the term "commitment," *i.e.* an international obligation to another country, especially one to defend it by military or financial assistance, had been expanded to include engagements contained in executive agreements, and even those in single declarations, as well as those in treaties.[20]

In January 1969 the Foreign Relations Committee established a Subcommittee on United States Security Agreements Abroad for the duration of the 91st Congress.[21] After extensive hearings the Senate adopted Senate Resolution 85 on "National Commitments," [22] which expressed the sense of the Senate that a commitment to defend a foreign country or territory through use of American forces or financial resources can result "only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or government resolution of both Houses of Congress specifically providing for such commitment." [23]

The Senate was soon to have occasion to challenge executive branch actions as being in contravention of the national commitments resolution. For example, shortly after the resolution was adopted, Senator Fulbright charged that the executive branch had violated it by failing to submit the so-called Spanish Bases Agreement to the Senate in the form of a treaty.[24] The Agreement, signed by the United States and Spain in August, 1970, was officially titled "Agreement of Friendship and Cooperation." [25] In it the parties agreed to cultural, scientific, educational, agricultural, and, most significantly, defense cooperation. The Agreement was the result of nearly two years of negotiations, which were delayed first by Spanish demands for large amounts of military assistance and then by

[14] 14 M. WHITEMAN, *supra* note 7, at 210.

[15] *See* Statement of John R. Stevenson, Legal Adviser, Department of State, in SUBCOMM. ON SEPARATION OF POWERS, SENATE COMM. ON THE JUDICIARY, 92D CONG., 2D SESS., HEARINGS ON CONGRESSIONAL OVERSIGHT OF EXECUTIVE AGREEMENTS 249 (Comm. Print 1972) [hereinafter cited as EXECUTIVE AGREEMENTS HEARINGS].

[16] *Id.*

[17] For extensive discussion of the history of executive agreements, *see, e.g.*, E. BYRD, *supra* note 8; A. GILBERT, EXECUTIVE AGREEMENTS AND TREATIES, 1947–1973 (1973); W. MCCLURE, INTERNATIONAL EXECUTIVE AGREEMENTS (1941).

[18] *See* remarks of Senator Fulbright summarizing the work of the Senate Committee on Foreign Relations in the 91st Congress, 116 CONG. REC. 44016 (1970).

[19] *See Hearings on S. Res. 151 Before the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess. (1967). *See also* SENATE COMM. ON FOREIGN RELATIONS, REPORT ON S. RES. 187 (Comm. Resolution), S. REP. No. 797, 90th Cong., 1st Sess. (1967).

[20] *See* SENATE COMM. ON FOREIGN RELATIONS, NATIONAL COMMITMENTS, S. REP. No. 129, 91st Cong., 1st Sess. 26 (1969).

[21] *See* SUBCOMM. ON SECURITY AGREEMENTS AND COMMITMENTS ABROAD, 91st CONG., 2D SESS., REPORT ON SECURITY AGREEMENTS AND COMMITMENTS ABROAD 1 (Comm. Print 1970).

[22] 115 CONG. REC. 17245 (1969).

[23] The full text of Senate Resolution 85 provides:

Whereas accurate definition of the term "national commitment" in recent years has become obscured: Now, therefore, be it

Resolved, That (1) a national commitment for the purpose of this resolution means the use of the armed forces of the United States on foreign territory, or a promise to assist a foreign country, government, or people by the use of the armed forces or financial resources of the United States, either immediately or upon the happening of certain events, and (2) it is the sense of the Senate that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

[24] *See* Senator Fulbright's statement of August 2, 1970, N.Y. Times, Aug. 3, 1970, § 1, at 7, col. 1.

[25] The agreement entered into force Sept. 26, 1970, [1970] 21 U.S.T. 1677, T.I.A.S. No. 6924.

174B

objections from the Foreign Relations Committee, especially from Senator Fulbright.[26]

Senator Fulbright reacted to news of the signing by announcing that he would offer an amendment —prohibiting spending by the executive branch of any funds for troops or use of military bases in Spain except in accordance with "affirmative action taken by the executive and legislative branches through means of a treaty or convention" [27]—to the Military Procurement Authorizations Bill,[28] then before the Senate. In his view, implicit in the Agreement were United States military commitments to Spain; he believed that "the process of orderly constitutional government" required approval of the Agreement as a treaty by a two-thirds vote of the Senate.[29]

The focus of Senator Fulbright's concern was chapter VIII of the Agreement, titled "Cooperation for Defense," which provides in its introductory paragraph that "both Governments, within the framework of their constitutional processes, and to the extent feasible and appropriate, will make compatible their respective defense policies in areas of mutual interest. . . ." In article 30 of the Agreement each government agrees to "support the defense system of the other and make such contributions as are deemed necessary and appropriate to achieve the greatest possible effectiveness of those systems to meet possible contingencies. . . ." Article 31 provides that the United States will "support Spanish defense efforts as necessary and appropriate, by contributing to the modernization of Spanish defense industries, as well as granting military assistance to Spain, in accordance with applicable agreements," [30] subject to appropriation of funds by Congress, if required, and to United States legislation. For its part, the Government of Spain in article 32 authorizes the United States "to use and maintain for military purposes certain facilities in Spanish military installations agreed upon by the two Governments." [31]

Article 34 provides that in the event of an "attack against the security of the West," the two governments will consult as to time and manner of the use of military facilities by the United States. Such consultations are to take place in a joint committee established, pursuant to article 36, to ensure "greater effectiveness of the reciprocal defense support granted by the two Governments to each other. . . ." Under article 35 this "co-operation for defense" is to "form a part of the security arrangements for the Atlantic and Mediterranean areas. . . ."

In closed hearings before the Foreign Relations Committee, Senator Fulbright's contention that the Agreement contained United States commitments to come to the defense of Spain in case of attack on Spanish territory was challenged by U. Alexis Johnson, Under Secretary of State of Political Affairs, who insisted that the Agreement contained no American military commitments along the lines of those in mutual defense treaties.[32] In support of his argument, Under Secretary Johnson noted that language in the 1963 Joint Declaration between Spain and the United States [33] renewing the 1953 Defense Agreement [34] had not been included in the 1970 Agreement, which replaced the 1963 Declaration, in part to meet concern expressed by the Foreign Relations Committee that the language might be interpreted as a commitment to defend Spain militarily.[35] The second paragraph of the 1963 Declaration provided that a threat to either country would be a "matter of common concern," and "each country would take action as it may consider appropriate within the framework of its constitutional processes." [36]

---

[26] *See* SUBCOMM. ON UNITED STATES SECURITY AGREEMENTS AND COMMITMENTS ABROAD, 91st CONG., 2D SESS., HEARINGS ON SPAIN AND PORTUGAL (Comm. Print 1970); N.Y. Times, Aug. 3, 1970, § 1, at 7, col. 1.

[27] *See* Senator Fulbright's statement of August 2, 1970, *reprinted in* SENATE COMM. ON FOREIGN RELATIONS, 91ST CONG., 2D SESS., HEARINGS ON THE SPANISH BASE AGREEMENTS 54, 57 (Comm. Print 1970); Senator Fulbright's statement of August 5, 1970, N.Y. Times, Aug. 6, 1970, § 1, at 1, col. 7.

[28] Military Procurement Act of 1971, Pub. L. No. 91-441, 84 Stat. 905 (codified in scattered sections of 10, 50 U.S.C.).

[29] Senator Fulbright's statement of Aug. 2, 1970, *supra* note 27, at 57-58; N.Y. Times, Aug. 3, 1970, § 1, at 7, col. 1.

[30] For the kind of substantial military assistance the United States is prepared to render to Spain pursuant to the agreement, see the letter from Secretary of State William P. Rogers to Gregorio Lopez Bravo, Minister of Foreign Affairs of Spain, 63 DEP'T STATE BULL. 242 (1970).

[31] These military installations include Torrejon Air Base, Zaragoza Air Base, Moron Air Base (standby), Rota Naval Base, Cadiz-Zaragoza petroleum pipeline and pumping facilities, petroleum and other storage facilities, and communications and navigation network support facilities. *Id.* at 243.

[32] N.Y. Times, Aug. 6, 1970, § 1, at 1, col. 7.

[33] Defense: Military Facilities in Spain, [1963] 14 U.S.T. 1406, T.I.A.S. No. 5437.

[34] Defense Agreement with Spain, Sept. 26, 1953, [1953] 4 U.S.T. 1895, T.I.A.S. No. 2850.

[35] Senator Fulbright's statement of August 5, 1970, *supra* note 27.

[36] It is interesting to compare the language of the 1963 Declaration with that of some mutual security treaties; the similarity is often striking. *See, e.g.*, Southeast Asia Collective Defense Treaty, Sept. 8, 1954, art. IV, ¶ 1, [1955] 6 U.S.T. 81, 83, T.I.A.S. No. 3170 ("[e]ach Party recognizes that aggression by means of armed attack . . . against any of the Parties . . . would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes."); North Atlantic Treaty, *done* Apr. 4, 1949, art. 5, 63 Stat. 2241, [1949] T.I.A.S. No. 1964, 34 U.N.T.S. 243 ("an armed attack against one or more of [the Parties] shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked . . .");

1744

Senator Fulbright ultimately decided not to introduce his amendment. In December 1970, however, the Senate adopted a resolution offered by Senator Church expressing the sense of the Senate that nothing in the Agreement "shall be construed as a national commitment by the United States to the defense of Spain." [37]

More recently, it has been reported that Defense Department officials expect that the Spanish government will demand a security treaty with the United States as the price for renewing American military base rights in Spain when the 1970 Agreement expires in 1975.[38] According to this report, some Pentagon officials would be inclined to accept this demand on the ground that it would only formalize an unwritten commitment the United States already has to go to the defense of Spain under the existing base rights agreement.

There are indications that the executive branch may be moving toward formal acceptance of the Spanish demand. In July 1974 Secretary of State Kissinger reportedly signed a new declaration of military cooperation between Spain and the United States.[39] Although the declaration apparently does not contain any commitment of automatic help from the United States for the defense of Spain in the event of an armed attack, it does reportedly include a clause providing that "a threat to or an attack on either country would be a matter of concern to both and each country would take such action as it may consider appropriate within the framework of its constitutional processes." [40] Most recently, the United States is reported to have begun formal negotiations in Madrid in November 1974 on renewal of the Spanish Bases Agreement and to face a Spanish negotiating position favoring conclusion of a mutual defense treaty.[41]

There have been other instances when the Senate has challenged the executive branch's conclusion of international agreements other than treaties as inconsistent with constitutional allocations of power between the President and Congress. In December 1971, by exchange of notes, the Department of State entered into an agreement with Portugal concerning continued American use of military facilities in the Azores in return for the United States providing Portugal with about 435 million dollars in credits and assistance.[42] By a similar exchange of notes in December 1971 the State Department concluded an agreement with Bahrain establishing an American military base in that country.[43] In hearings before the Senate Committee on Foreign Relations during 1972, it was contended that the agreement with Portugal commiting the United States to furnish large amounts of assistance to a country involved in three colonial wars in Africa and involving the stationing of American forces abroad was a significant foreign policy move that required the Senate's advice and consent and hence submission of the agreement to the Senate in treaty form.[44] The agreement with Bahrain was challenged on the grounds that it provided for a permanent military base where the United States had never had one before and that such a base in the Persian Gulf area had the potential to involve the United States in territorial disputes among Iran, Iraq, Saudi Arabia, and several other states.[45]

In response to the challenge to the Portuguese base agreement and as authority for the agreement, the Department of State cited the President's authority as Commander-in-Chief,[46] articles three and five of the North Atlantic Treaty,[47] and foreign

---

Charter of the Organization of American States, Apr. 30, 1948, ch. V, art. 24, [1951] 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3 ("[e]very act of aggression by a State against . . . an American State shall be considered an act of aggression against the other American States"); and Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, art. 3, ¶ 1, 62 Stat. 1681, [1948] T.I.A.S. No. 1838, 21 U.N.T.S. 77 ("an armed attack by any state against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations").

[37] 116 CONG. REC. 41167–68 (1970).

[38] N.Y. Times, Nov. 26, 1973, § 1, at 6, col. 1.

[39] N.Y. Times, July 10, 1974, at 2, col. 4.

[40] *Id.* col. 5. It is noteworthy that the language of this declaration is closely similar to that of the Southeast Asia Collective Defense Treaty, Sept. 8, 1954, art. IV, ¶ 1, [1955] 6 U.S.T. 81, T.I.A.S. No. 3170, which provides "[e]ach Party recognizes that aggression by means of armed attack . . . against any of the Parties . . . would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes."

[41] N.Y. Times, Nov. 5, 1974, at 9, col. 1.

[42] Continued stationing of American Forces at Lajes Base, Azores, Dec. 9, 1971, [1971] 22 U.S.T. 2106, T.I.A.S. No. 7254. At the time of the signing of the agreement, the United States gave Portugal three letters—a letter of intent concerning various forms of economic assistance to Portugal, a letter of explanation concerning possible Export-Import Bank financing of Portuguese projects, and a letter concerning support by Portugal of the U.S. Military Assistance Advisory Group in Lisbon. *See* Statement of U. Alexis Johnson, *Hearings on S. Res. 214, Before the Senate Comm. on Foreign Relations*, 92d Cong., 2d Sess. at 5, 8 (1972). For purposes of this discussion, these letters should be considered part of the Portuguese Bases Agreement.

[43] Deployment in Bahrain of the United States Middle East Force, Dec. 23, 1971, [1971] 22 U.S.T. 2184, T.I.A.S. No. 7263.

[44] *See* Statement of Senator Case, *Hearings on S. Res. 214 Before the Senate Comm. on Foreign Relations, supra* note 42, at 3.

[45] *Id.* at 4.

[46] U.S. CONST. art. II, § 2, cl. 1.

[47] *Done* April 4, 1949, 63 Stat. 2241 (1949), T.I.A.S. No. 1964, 34 U.N.T.S. 243.

Article 3 provides:

In order to more effectively achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

1745

aid legislation granting the President authority, subject to appropriations, to provide assistance to foreign countries.[48] The State Department replied to the challenge to the Bahrain agreement by arguing that agreements for military bases abroad were within the President's power as Commander-in-Chief.[49] As to both agreements, the Department argued further that

> Examination of the texts of the two agreements shows that neither involves any new policy on the part of the United States. Neither contains any defense or political commitments on the part of the United States. To have concluded these agreements as treaties would have given them a formality which implied an importance and a U.S. commitment which are neither involved nor desired. Both agreements involve the granting to the United States of the right to use facilities for our vessels, aircraft or personnel and the governing of the status of our personnel. These matters have traditionally been handled by executive agreement. . . .[50]

In June 1972 the Senate voted to cut off funds for the military base agreements with Portugal and Bahrain unless the agreements were submitted to the Senate as treaties.[51] The House of Representatives, however, refused to agree to the cutoff of funds. In 1973 Senator Case introduced a similar bill [52] relating only to the military base agreement with Portugal.[53] No action has yet been taken on this bill.

Other more ambitious efforts to pass legislation regulating the international agreement-making process proved equally unsuccessful. For example, in April 1972 Senator Ervin introduced a bill providing that an international agreement other than a treaty would come into force at the end of 60 days of continuous session of Congress following its submission, unless the House and the Senate passed a concurrent resolution disapproving the agreement.[54] The Ervin bill was not reported out of the Judiciary Committee in the ninety-second Congress, but was reintroduced in the ninety-third.[55] No further action was taken on the bill.

Also in 1972 Senator Case introduced a bill similar to the Ervin bill but narrower in scope. It would have precluded appropriations or expenditures of any funds to implement an executive agreement that provided for the establishment of a military installation in a foreign country to which United States combat forces would be assigned to active duty; revised or extended the provision of any such agreement; or provided for the storage of nuclear weapons or renewed an agreement relating to such storage, unless the agreement was submitted to the Senate for its advice and consent and such advice and consent was given.[56] Senator Case's bill was not reported out of the Foreign Relations Committee in the ninety-second Congress.

In May 1974 the Senate passed a bill authorizing funding for the Department of State and for the United States Information Agency for fiscal year 1975.[57] Section ten of that bill, amending the Act of August 1, 1956, which sets forth Basic Authority for the Department of State,[58] provided:

Military Base Agreements

> SEC. 10. The Act of August 1, 1956, as amended by sections 8 and 9 of this Act, is further amended by adding at the end thereof the following new section:
>
> "SEC. 18(a) No funds may be obligated or expended under any provision of law to carry out any agreement entered into, on or after the date of enactment of this section, between the United States Government and the government of any foreign country (1) providing for the establishment of a major military installation at which units of the Armed Forces of the United States are to be assigned to duty, (2) renewing, or extending the duration of, any such agreement, or (3) making changes which significantly alter the terms of such agreement, unless the Congress

---

Article 5 provides:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

[48] *See* Memorandum of Law, in *Hearings on S. Res. 214, supra* note 44, at 37.

[49] *See* Memorandum of Law Regarding Conclusion of Agreements With Portugal and Bahrain, *id.* at 14.

[50] *Id.* at 15.

[51] 118 CONG. REC. 9653 (daily ed. June 19, 1972).

[52] S. 445, 92d Cong., 2d Sess. (1972).

[53] It is the understanding of the author, based on information obtained from Senator Case's office, that S. 445 did not refer to the military base agreement with Bahrain because the Government of Bahrain was reconsidering whether it wished to have an American military base in its territory; hence such a reference was deemed unnecessary at that time.

[54] S. 3475, 92d Cong., 2d Sess. (1972). Senator Ervin's bill used the term "executive agreement" in its expansive sense, *i.e.* to refer to all international agreements other than treaties.

[55] S. 1472, 93d Cong., 1st Sess. (1973).

[56] S. 3637, 92d Cong., 2d Sess. (1972).

[57] S. 3473, 93d Cong., 2d Sess. (1974). 120 CONG. REC. S. 8472 (daily ed. May 20, 1974).

[58] 22 U.S.C. §§ 2669 *et seq.* (1970) *as amended.*

174c

approves that agreement by law, or, if a treaty, the Senate advises and consents to that treaty.

"(b) For purposes of this section, 'a major military installation' means an installation with an assigned, authorized, or detailed personnel strength in excess of five hundred."

Section 11 of the funding authorization bill would also have amended the Act of August 1, 1956, as follows:

Diego Garcia Agreement

SEC. 11. The Act of August 1, 1956, . . . is further amended by adding at the end thereof the following new section:

"SEC. 19. Commencing thirty days after the date of enactment of this section, no steps shall be taken to implement any agreement signed on or after January 1, 1974, by the United States and the United Kingdom, relating to the establishment or maintenance by the United States of any military base on Diego Garcia, until the agreement is submitted to the Congress and approved by law."

Neither of these provisions appeared in the House version of the funding authorization bill or in the conference substitute ultimately adopted. The conference report expressly provided, however, that the provision on military base agreements was dropped without prejudice to future consideration by the House and Senate.[59]

The legislation concerning international agreements other than treaties that Congress has adopted has been more modest in scope than the efforts discussed above. For example, Public Law 92–403 [60] requires that international agreements other than treaties be sent to Congress within 60 days after they are concluded, except when this procedure would, in the President's opinion, be prejudicial to national security. In these cases the agreements are to be sent on a confidential basis to the House Committee on Foreign Affairs and to the Senate Committee on Foreign Relations. The purpose of transmittal to Congress or the Foreign Affairs and Foreign Relations Committees, however, is solely informational; the law does not authorize congressional disapproval of the agreements.

Such authorization in a more limited context was provided in October 1974, when President Ford signed into law a bill providing that international agreements for cooperation on certain nuclear technology will come into force at the end of 60 days of continuous session of Congress following their submission, unless the House and Senate have passed a concurrent resolution disapproving them.[61] Before the end of the first 30 days of the 60 day period, the Joint Committee on Atomic Energy is required to submit a report to Congress indicating whether it favors approval or disapproval of the agreement.

Finally, in the Trade Reform Act of 1974 [62] Congress required specific congressional approval for any changes the President might negotiate through international trade agreements in nontariff barriers, such as import quotas or labeling requirements. Congress thus went beyond an earlier House version of the Act that would have allowed either house to veto such changes, but would not have required express approval.[63]

As the above background indicates, with the possible exceptions of the military base agreement with Portugal, which arguably qualifies as a congressional-executive agreement authorized by the North Atlantic Treaty and by foreign aid legislation, and of international agreements concerning nuclear technology, recent international agreements other than treaties subjected to congressional challenge have been executive agreements involving military aid and the stationing abroad of American military forces. In the next section of this Article we turn to an analysis of the constitutional issues arising out of the use of such agreements.

II. Executive Agreements: Constitutional Prerogative or Usurpation?

A primary difficulty in discussing the constitutional aspects of treaties and international agreements other than treaties is that the United States Constitution is frustratingly elliptic on the subject. There are only four express references to treaties in the Constitution [64] and none whatsoever to executive agreements. The main provision on treaties is article II, section two, which provides that the President "shall have power, by and with the Advice and Consent of the Senate, to make Treaties . . . and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers. . . ." Section three of article

[59] 120 CONG. REC. H. 10173 (daily ed. Oct. 8, 1974). As to the military base on Diego Garcia, the Military Construction Act of Dec. 27, 1974, Pub. L. No. 93–552, contains a provision that would permit the spending of funds for the Diego Garcia project only after the President certifies in writing, subject to approval by both chambers, that he had evaluated all military and foreign policy implications of the Diego Garcia project and found it essential to the national interest. The provisions also would limit spending on the project to $18,100,000. *See* 32 CONG. Q. WEEKLY REP. 3374 (Dec. 21, 1974).

[60] 1 U.S.C.A. § 112(b) (Supp. 1975).

[61] S. 3698, 93d Cong., 2d Sess. (1974). *See* Washington Post, Oct. 29, 1974, at A-12, col. 1.

[62] Act of Jan. 3, 1975, Pub. L. No. 93–618.

[63] Wall St. J., Dec. 18, 1974, at 4, col. 2.

[64] U.S. CONST., art. I, § 10, cl. 1; art. II, § 2, cl. 2; art. III, § 2, cl. 1; art. VI, cl. 2.

- 1747'

II provides that "he shall receive Ambassadors and other public Ministers. . . ." This provision is the basis for the conclusion, now part of the conventional wisdom, that while the President makes treaties with the advice and consent of the Senate, he alone negotiates, in the course of receiving "Ambassadors and other public Ministers," and neither the Senate nor the Congress as a whole has authority to intrude into the negotiating process.[65]

Recently, however, the proposition that the President has exclusive authority to negotiate international agreements has come under sharp attack. In a provocative and scholarly article,[66] Raoul Berger pointed out that the text of the Constitution lends support to a contrary conclusion. Specifically, he noted that "the only power given to the President alone was the power to 'receive Ambassadors.' Even the power to 'appoint Ambassadors' was made subject to Senate 'advice and consent.' "[67] He argued that negotiation is an integral part of the treaty making process and that, if the Framers had wished to reserve it for independent presidential exercise, they would have expressly so provided, as they did with respect to the nomination though not the appointment of ambassadors. In Berger's view, if the Framers had wished to exclude senatorial advice and consent from the President's negotiations, they would have provided that "he shall *negotiate*, and by and with the Advice and Consent of the Senate, *make* treaties."[68] Moreover, Berger adduced an impressive array of historical documentation in an effort to prove that the meaning attached to the terms by the Framers supports his interpretation of the text.[69]

However valid or invalid Berger's views on the requirements of senatorial advice and consent in treaty negotiation are, there is clear authority in the Constitution for the making of international agreements in treaty form. Textual authority for the making of international agreements in the form of executive agreements is less apparent. Article I, section ten, paragraph (3) of the Constitution prohibits the states from entering into "any Agreement or Compact with another State, or with a foreign power," without the consent of Congress. And there is an absolute prohibition in paragraph (1) of article I, section ten, against states entering into treaties. From these provisions it has been inferred that there is a distinction between treaties and other forms of international agreements for purposes of federal government practice.[70] It has also been contended that since the Constitution invests the President with substantial authority and responsibilities in foreign affairs, exercise of this authority and fulfillment of these responsibilities require a power "inherent" in the President to conclude executive agreements.[71] Constitutional sources cited as support for this inherent power include (1) the President's authority as chief executive to represent the nation in foreign affairs, (2) the President's authority to receive ambassadors and other public ministers, (3) the President's authority as commander-in-chief, and (4) the President's responsibility to "take care that the laws be faithfully executed."[72]

This concept of an inherent and independent power in the President to conclude international agreements has substantial support in the academic community[73] and a measure of support in the language of Supreme Court decisions.[74] It has further been argued that "if the subject of the [executive] agreement is a matter within the President's special constitutional competence—related, for example, to the recognition of a foreign government or to an exercise of his authority as Commander-in-Chief . . .—the separation of powers doctrine might . . . permit the President to disregard [a] statute [authorizing Congress to disapprove executive agreements] as an unconstitutional invasion of his own power."[75]

Once again, however, Raoul Berger has strongly challenged the conventional wisdom by maintaining that neither the text nor the drafting history of the Constitution supports executive agreements. As to the text of the Constitution, Berger contended that the Framers' explicit authorization for the states to enter into "agreements" but omission to do so for the President implies a deliberate decision to withhold that authority from him. Moreover, according to Berger,

> It is a non sequitur . . . to deduce from a grant of power to a state to make 'agreements' *with the consent* of Congress, a presidential power to make such agreements altogether free of congressional consent; let alone that such a construction collides with the Founders' unmistakable intention to limit presidential action in the diplomatic area by the requirements of Senate

[65] 5 G. HACKWORTH, *supra* note 4, at 28–30.

[66] Berger, *supra* note 2.

[67] *Id.* at 5.

[68] *Id.* at 6.

[69] *Id.* at 5–26.

[70] *See, e.g.*, Mathews, *The Constitutional Power of the President to Conclude International Agreements*, 64 YALE L.J. 345, 351 (1955); Sutherland, *The Bricker Amendment, Executive Agreements, and Imported Potatoes*, 67 HARV. L. REV. 281, 287 (1953).

[71] *See* Mathews, *supra* note 70, at 352.

[72] See Department of State, Treaties and Other International Agreements, Notice of Proposed Rulemaking, 38 Fed. Reg. 22084, 22085 (1973).

[73] *See, e.g.*, L. HENKIN, *supra* note 1, at 177.

[74] *See, e.g.*, United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 324 (1937).

[75] McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 YALE L.J. 181, 317 (1945).

1748

consent. The rule of construction is to carry out, not to defeat, that intention.[76]

As to the intention of the Framers, Berger cited statements by Hamilton that the commander-in-chief power "would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral . . ." [77] and by Corwin that the President "will have no powers that any high military or naval commander . . . might not have." [78] He also cited a statement by Hamilton that the President's power to receive ambassadors "is more a matter of dignity than of authority" and "will be without consequence in the administration of the government. . . ." [79] Similarly, Berger's reading of the intent of the Framers—as reflected in the Constitutional Convention or in the Ratification Conventions—lead him to conclude that the President's responsibility to "take care that the laws be faithfully executed" meant simply that he was to implement the laws as directed by Congress as their agent and conferred no independent powers on the President.[80]

Berger found the Supreme Court decisions commonly cited in support of executive agreements either inapposite [81] or incorrect in their analysis of constitutional law and policy.[82] He noted further that in no decision has the Supreme Court ruled on whether an executive agreement can be made against the wishes of Congress.[83] Concerning the fact of long historical use of executive agreements,[84] Berger sharply criticized the thesis, which he termed "adaptation by usage," that "continuance of [a] practice by successive administrations throughout our history makes contemporary constitutionality unquestionable." [85] He argued that acceptance of the thesis would mean "usurpation of power, if repeated often enough, accomplishes an amendment of the Constitution and a transfer of power." [86]

At a maximum, Berger contended, the power of the President to enter into international agreements is a concurrent power shared with Congress and dependent upon Congress' tacit consent. It accordingly follows, Berger continued, citing Justice Jackson's opinion in the *Steel Seizure* case,[87] that Congress can curtail the power.[88]

Those who support the concept of an independent presidential power to conclude international agreements free from congressional intrusion concede that the parameters of this power are narrow and ill-defined.[89] The authority to recognize a foreign government, as exercised in the Roosevelt-Litivinov agreement of 1933, has often been cited [90] as one such independent power, although doubt has been expressed about even this power.[91] Other examples commonly cited include the power to make armistice agreements, agreements incident to the conduct of hostilities, or even wartime commitments on territorial and political issues for the post-war, as at Yalta and Potsdam, and the power to conduct negotiations.[92] There is some, but limited, support for the proposition that the President's exclusive power encompasses agreements regarding the stationing of armed forces abroad in peace time.[93] A policy reason often adduced in support of exclusive presidential authority in these areas is the alleged "greater capacity of the Executive to act with dispatch, decisiveness, secrecy, and negotiating responsiveness." [94]

As we have seen, Berger has strongly contended that the President has no authority to enter into international agreements on his own and that at a maximum the President has a concurrent power subject to congressional control. Perhaps it is not necessary to resolve this larger issue for present purposes, however. Rather, it seems useful to narrow the issue to international agreements regarding the stationing abroad of American armed forces in peace time, since this is the area that has generated debate between Congress and the Executive. In the opinion of this writer, such agreements fall within, in the words of Alexander M. Bickel, a "zone of twilight," *i.e.* a gray area, between presidential

[76]Berger, *supra* note 2, at 40.

[77]*Id.* at 43, *quoting* THE FEDERALIST, No. 69, at 448 (Mod. Lib. ed. 1941).

[78]Berger, *supra* note 2, at 43, *quoting* E. CORWIN, THE PRESIDENT: OFFICE AND POWERS 276 (3d ed. 1948).

[79]Berger, *supra* note 2, at 5, 43–44, *quoting* THE FEDERALIST, *supra* note 77, at 451.

[80]Berger, *supra* note 2, at 19–21.

[81]Cases Berger finds inapposite as support for presidential agreements include Monaco v. Mississippi, 292 U.S. 313 (1934); B. Altman & Co. v. United States, 224 U.S. 583 (1912); Tucker v. Alexandroff, 183 U.S. 424 (1902). *See* Berger, *supra* note 2, at 44–47.

[82]Berger sharply criticizes the holding and rationales in United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 324 (1937); United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936). *See* Berger, *supra* note 2, 45–48.

[83]Berger, *supra* note 2, at 47.

[84]*See* note 17 *supra*.

[85]Berger, *supra* note 2, at 49, *quoting* McDougal & Lans, *supra* note 75, at 291.

[86]Berger, *supra* note 2, at 49.

[87]Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637–39 (1952).

[88]Berger, *supra* note 2, at 48.

[89]*See, e.g.*, J. Moore, *Executive Agreements and Congressional Executive Relations*, EXECUTIVE AGREEMENTS HEARINGS, *supra* note 15, at 149, 154–55.

[90]McDougal & Lans, *supra* note 75, at 610.

[91]See Testimony of Professor Alexander M. Bickel, *Transmittal of Executive Agreements to Congress, Hearings on S. 596 Before the Senate Foreign Relations Comm.*, 92d Cong., 1st Sess. at 26 (1971).

[92]L. HENKIN, *supra* note 1, at 177–78.

[93]3 W. WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 1567 (2d ed. 1929).

[94]Moore, *supra* note 89, at 155.

144

and legislative powers. This "zone of twilight," according to Professor Bickel, "may be occupied by Congress at will; that is the significance of it. It exists, and independent Presidential power can exist within it, only by Congress leave [*sic*], or because of the inertia of Congress. It is redefined or it vanishes whenever Congress chooses to act." [95]

The President's power, if any, to conclude agreements concerning the stationing abroad of American armed forces in peace time is based primarily on his authority as commander-in-chief and on his role as chief executive. As we have seen, the scope of this authority is a matter of sharp dispute. At any rate, the stationing of American armed forces abroad falls into what may be called the "war powers" area, and in this area the Constitution expressly grants Congress substantial authority. For example, the Constitution gives Congress the specific powers to "provide for the common defense," [96] to "declare War," [97] to "raise and support Armies," [98] to "provide and maintain a Navy," [99] and to "make Rules for the Government and Regulation of the land and naval forces." [100] Moreover, Congress has the general power "[t]o 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." [101]

The "necessary and proper" clause appears to authorize Congress to legislate even in the area of powers expressly granted by the Constitution to the President, because of the President's position as an officer of the Government of the United States, and the Supreme Court has expressly recognized that "Congress has broad power under the Necessary and Proper Clause to enact legislation for the regulation of foreign affairs." [102] On the other hand, such an expansive reading of the clause has been criticized on the ground that it in effect negates the separation of powers doctrine.[103] In any event, at a minimum the necessary and proper clause seems to authorize Congress to enact legislation regarding areas in which it is expressly granted power by the Constitution, and, as we have seen, the Constitution grants Congress substantial authority in the war powers area. It is therefore submitted that Congress has constitutional authority to grant, modify, or, indeed, deny presidential power to conclude international agreements regarding the stationing of American armed forces abroad.

III. Treaties or Congressional-Executive Agreements: A Choice Dictated by the Constitution or by Policy Considerations?

As indicated above, the debate over executive agreements has revolved around the use of executive agreements in place of treaties. But assuming *arguendo* that the President has no constitutional authority to enter into executive agreements or that at a maximum the scope of his authority is extremely narrow and subject to congressional control, the question remains whether the Constitution requires that some international agreements be concluded as treaties rather than as congressional-executive agreements.

An argument can be made that the Framers intended the treaty to be the exclusive method of entering into an international agreement. There are historical data indicating that the omission from the Constitution of any reference to executive agreements was the result of a deliberate choice on the part of the Framers. For example, there is substantial evidence that the Framers profoundly distrusted executive power, based on experience in the colonial period, which "ended with the belief prevalent that the 'executive magistracy' was the natural enemy, the legislative assembly the natural friend of liberty. . . ." [104] The Constitutional Convention considered proposals to require the advice and consent of both Houses, rather than only the Senate, to the making of treaties and rejected them in part because of insistence by the small states on participation in treaty making on an equal basis with large states.[105] The small states feared that the power to override state laws, especially state constitutions, through treaties would lead to oppression by the national government.[106]

Moreover, in response to the proposition that a congressional-executive agreement is constitutionally interchangeable with a treaty, it has been contended that since Congress has no power to negotiate with foreign governments, it cannot delegate any such power to the President.[107] In the same vein, it has been noted that international agreements are primarily international acts—some make

[95]Bickel, *supra* note 91, at 27.
[96]U.S. CONST. art. I, § 8, cl. 1.
[97]*Id.* cl. 11.
[98]*Id.* cl. 12.
[99]*Id.* cl. 13.
[100]*Id.* cl. 14.
[101]*Id.* cl. 18.
[102]Kennedy v. Mendoza-Martinez, 372 U.S. 144, 160 (1963).
[103]See comment by John Norton Moore, in EXECUTIVE AGREEMENTS HEARINGS, *supra* note 15, at 166.

[104]Berger, *supra* note 2, at 19, *quoting* CORWIN, *supra* note 78, at 4.
[105]1 W. WILLOUGHBY, *supra* note 93, at 520; Berger, *supra* note 2, at 40–42.
[106]Berger, *supra* note 2, at 41.
[107]Moore, 60 *Proceedings of the American Philosophical Society, Minutes* XV-XVI (1921), *quoted in* Q. WRIGHT, THE CONTROL OF AMERICAN FOREIGN RELATIONS 375 (1922).

1750

no domestic law at all—and may deal with matters not within any enumerated power of Congress or even within its unenumerated power to legislate concerning foreign affairs.[108] Some have therefore argued that any power in the President and Congress to make international agreements must be limited to matters within the legislative powers of Congress.[109]

The generally accepted and prevailing view, however, is that even if neither the President nor Congress has the power acting alone to make international agreements, acting together they represent the national sovereignty and therefore have the authority to make agreements, a power inherent in the sovereignty.[110] In the words of Louis Henkin,

> Neither Congresses nor Presidents nor courts have been troubled by these conceptual difficulties and differences [the arguments raised by the opponents of congressional-executive agreements]. Whatever their theoretical merits, it is now widely accepted that the Congressional-Executive agreement is a complete alternative to a treaty: the President can seek approval of any agreement by joint resolution of both houses of Congress instead of two-thirds of the Senate only. Like a treaty, such an agreement is the law of the land, superseding inconsistent state law as well as inconsistent provisions in earlier treaties, in other international agreements or acts of Congress.[111]

If one accepts the view that a congressional-executive agreement is a complete alternative to a treaty, the decision to employ one or the other method in concluding a particular international agreement becomes a policy question. There is still a question, of course, of who decides this question. In practice both the criteria for making these decisions as well as the decisions themselves have largely been a prerogative of the executive branch, *i.e.* the Department of State. Specifically, in 1953 the Department established guidelines known as the Circular 175 Procedures, which include provisions relating to the decision whether an agreement should be concluded as a treaty or as an international agreement other than a treaty.[112] According to these guidelines, the treaty form is to be used in the following five circumstances: (1) when the subject matter has traditionally been dealt with by treaty; (2) when the subject matter is not wholly within the delegated powers of Congress and not within the independent constitutional authority of the President; (3) when the agreement is to have the force of law without legislative action by the Congress, and the action contemplated is not within the President's independent constitutional authority; (4) when the agreement involves important commitments affecting the nation as a whole; or (5) when it is decided to give utmost formality to the commitment.[113] If none of these five circumstances is present, the agreement is concluded as either a congressional-executive agreement or an executive agreement, the latter form being used only if there is no prior congressional authorization of the agreement and its subject matter falls within the President's independent constitutional authority, as determined by the Department.[114]

The Department has admitted that these guidelines suffer from a measure of imprecision, but contends that "it is not possible to develop an absolutely precise formula because that would require a definition of the entire scope of the President's authority and of the entire scope of the delegated powers of Congress and its powers under the so-called 'necessary and proper' clause."[115] At the same time, the Department has indicated a willingness to consult with Congress "whenever there is a serious question whether an international agreement is to be made in the form of a treaty or otherwise,"[116] and has incorporated a requirement for congressional consultations in these situations in its guidelines.[117]

At this writing the Department of State has announced that it is revising its Circular 175 procedures.[118] In its proposed revision, to which we shall return in the next section of this Article, the Department has listed a number of "Considerations for Selecting Among Constitutionally Authorized Procedures" for concluding international agreements.[119] These considerations include

> (i) The extent to which the agreement involves commitments or risks affecting the nation as a whole.
>
> (ii) Whether the agreement is intended to affect state laws.
>
> (iii) Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress.

[108] Agreements providing for participation in some international organizations and authorized or approved by Congress are an example. L. HENKIN, *supra* note 1, at 174.

[109] *See, e.g.*, Borchard, *Shall the Executive Agreement Replace the Treaty?* 53 YALE L.J. 664 (1944).

[110] McDougal & Lans, *supra* note 75.

[111] L. HENKIN, *supra* note 1, at 175.

[112] Department of State Circular 25, May 15, 1953, superseded in 1955 by Circular 175, codified in 11 FOREIGN AFFAIRS MANUAL §§ 700 *et seq.* (1969).

[113] 14 M. WHITEMAN, *supra* note 7, at 209.

[114] *Id.*

[115] See Statement of John R. Stevenson, EXECUTIVE AGREEMENTS HEARINGS, *supra* note 15, at 250.

[116] Letter from David M. Abshire, Assistant Secretary of State for Congressional Relations, *quoted in* Statement of John R. Stevenson, EXECUTIVE AGREEMENTS HEARINGS, *supra* note 15, at 251.

[117] 11 FOREIGN AFFAIRS MANUALS § 723.1.

[118] *See* note 10 *supra*.

[119] Circular 175, 1974 Version, *supra* note 10, § 721.3.

151

(iv) Past United States practice with respect to similar agreements.

(v) The preference of the Congress with respect to a particular type of agreement.

(vi) The degree of formality desired for an agreement.

(vii) The proposed duration of the agreement, the need for prompt conclusion of an agreement and the desirability of concluding a routine or short term agreement.

(viii) The general international practice with respect to similar agreements.

Also, the Department has directed that "[i]n determining whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty, the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the Senate, the Congress as a whole, or the President." [120]

Interestingly, there is no indication of precisely how these considerations are to be employed in the decision-making process. For example, one of the considerations is "[t]he extent to which the agreement involves commitments or risks affecting the nation as a whole." But there is no guidance in the revision about whether an agreement involving such commitments or risks—all other considerations being equal—should be concluded as a treaty, a congressional-executive agreement, or an executive agreement.

As to consultations with Congress, the revision includes as one of the objectives of the Circular 175 procedures "that timely and appropriate consultation is had with congressional leaders and committees on treaties and other international agreements." [121] It further provides that "[w]hen there is any question whether an international agreement should be concluded as a treaty or as an international agreement other than a treaty" and the Legal Adviser "considers the question to be a serious one . . . [c]onsultations . . . will be held with congressional leaders and committees as may be appropriate." [122] Also, under the revision the "office or officer responsible for any negotiations keeps in mind" that "with the advice and assistance of the Assistant Secretary for Congressional Relations, the appropriate congressional leaders and committees are advised of the intention to negotiate significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting them, including especially whether any legislation is considered necessary or desirable for the implementation of the new treaty or agreement." [123] At least arguably this last provision may represent a major change from past executive branch positions, which regarded any congressional involvement in the negotiation process as an unconstitutional intrusion into a function reserved to the President.

Another noteworthy aspect of the revised Circular 175 procedures is the provision "[t]hat where, in the opinion of the Secretary of State or his designee, the circumstances permit, the public be given an opportunity to comment on treaties or other international agreements." [124] There is, however, no provision concerning consultation with Congress on whether "the circumstances permit" comment by the public, or any other indication of limits on the discretion of the Secretary of State in this regard.

IV. Treaties and International Agreements other than Treaties: An Appraisal of the Present and Proposals for Future Action

A principal issue in the debate between the executive branch and Congress over treaties and international agreements other than treaties has been the necessity or desirability of legislation in this area. The consistent position of the executive branch has been that legislation is neither necessary nor desirable. As an alternative to legislation the executive branch has proposed "practical," informal arrangements involving regular consultations between the branches of government in order to fulfill Congress' need for a continuing flow of information.[125]

This argument did not prevail in the debate over the so-called Case Act,[126] which requires that all

[120] *Id.* § 721.3(viii). This provision begs the question of the permissible scope of the executive agreement, a primary issue between Congress and the executive branch. Nor is the issue clarified much by § 721.2(b) (iii), which provides

Agreements pursuant to the constitutional authority of the President: The President may conclude an international agreement on any subject within his constitutional authority so long as the agreement is not inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority. The constitutional sources of authority for the President to conclude international agreements include:

(1) The President's authority as Chief Executive to represent the nation in foreign affairs.

(2) The President's authority to receive Ambassadors and other public ministers.

(3) The President's authority as "Commander-in-Chief."

(4) The President's authority to "take care that the laws be faithfully executed."

[121] *Id.* § 720.2(c).

[122] *Id.* §§ 721.4(b), (c).

[123] *Id.* § 723.1(e).

[124] *Id.* § 720.2(d).

[125] *See, e.g.*, Statement of John R. Stevenson, *Transmittal of Executive Agreements to Congress*, *supra* note 91, at 56, 61.

[126] *See* text at note 60 *supra*.

1752

international agreements other than treaties be submitted to Congress 60 days after their conclusion. Rather, Congress found persuasive the argument that in order to fulfill its constitutional responsibilities in this area it has a right to be informed of the contents of all international agreements. Congress concluded that the availability of such information cannot be dependent on Executive discretion to supply it, but that instead it must be supplied in accordance with legislative mandate.[127]

At this writing, however, legislation enacted by Congress specifically relating to treaties and international agreements other than treaties is limited. In addition to the Case Act, it consists only of legislation subjecting international agreements for cooperation concerning certain nuclear technology to possible congressional disapproval,[128] a statute requiring the Secretary of State to provide for the publication of all treaties and other international agreements to which the United States has become a party during the last calendar year,[129] and the provision in the Trade Reform Act of 1974 requiring the President to transmit to Congress for its approval international trade agreements concerning removal of nontariff barriers.[130] It should be noted, however, that in November 1973 Congress overrode President Nixon's veto and enacted into law the so-called War Powers Resolution.[131] Although the Resolution is not directed specifically to treaties and executive agreements, a number of its provisions have significance for this area.

The War Powers Resolution subjects all American involvement in combat, except perhaps for hostilities on United States territory, to legislative control. Under subsection 5(b) of the Resolution, in the absence of congressional approval for such involvement, the President is required to terminate the use of United States Armed Forces after 60 days, unless Congress extends the deadline, Congress is unable to meet in the wake of armed attack on America, or the President obtains 30 more days of grace by certifying in writing that the troops' safety requires their continued use during the withdrawal process. Subsections 4(A) (2) and (3) require the President to submit a written report to Congress within 48 hours whenever United States armed forces are introduced "into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or in numbers which substantially enlarge United States armed forces equipped for combat already located in a foreign nation. . . ." These reporting provisions, however, do not otherwise limit the President's freedom of action in deploying and stationing troops abroad, except insofar as his freedom may be indirectly influenced by exchanging views with Congress and by providing the legislators with information.

In sum, under legislation presently in force relating directly or indirectly to treaties and international agreements other than treaties, the President is required (1) to transmit all internationl agreements other than treaties to Congress within 60 days of their conclusion; (2) to ensure, through the Secretary of State, the publication of all treaties and other agreements concluded during the past calendar year; (3) to submit international agreements other than treaties for cooperation concerning certain nuclear technology to Congress for possible disapproval; (4) to convey international trade agreements concerning removal of nontariff barriers to Congress for its approval; and (5) to report to Congress on the deployment or stationing of American armed forces abroad. Do these legislative requirements ensure that Congress will be capable of fulfilling its constitutional responsibilities concerning treaties and executive agreements? Or is further action required, in the form of either legislation or informal arrangements?

In the opinion of this writer, additional legislative action is both necessary and desirable. This action should consist of the promulgation of further legislation as well as the development of practical, informal arrangements for closer consultation among the executive branch, Congress, and the public. As to legislation, this writer believes that there is a need to mandate greater congressional involvement in the process of making international agreements other than treaties concerning the deployment and stationing abroad of American armed forces, hereafter termed "military base agreements." Specifically, this writer favors legislation along the lines of section ten of the Senate's original version of the Department of State/USIA funding authorization bill for fiscal 1975 regarding military base agreements.[132] For purposes of clarification, this writer would add a provision that a military base agreement would not come into force unless the Congress approves that agreement by law or the agreement is concluded in treaty form. Under original section ten, the only action subject to congressional approval of or Senate advice to ratification of a military base agreement would have been the obligation or expenditure of funds to

[127] *See, e.g.*, the remarks of Senator Case, *Transmittal of Executive Agreements to Congress, supra* note 91, at 66.

[128] *See* note 56 *supra*.

[129] 64 Stat. 979; 1 U.S.C. § 112(a) (1970).

[130] *See* text at notes 62, 63 *supra*.

[131] Act of Nov. 7, 1973, Pub. L. No. 93-148. For the text of the War Powers Resolution, see 12 INT'L LEG. MAT. 1521 (Nov. 1973).

[132] *See* text at notes 57, 58 *supra*.

1753

carry out the agreement. The purpose of adding a provision concerning the coming into force for the United States of a military base agreement would be to ensure that the agreement would have no internal effect as law until approved by Congress or ratified by the President as a treaty with the Senate's advice and consent and to put other nations on notice of such requirements.[133] So revised, the legislation would read as follows:

Military Base Agreements

The Act of August 1, 1956, is amended by adding at the end thereof the following new section:

"Section 18(a) No agreement entered into, on or after the date of enactment of this section, between the United States Government and the government of any foreign country (1) providing for the establishment of a major military installation at which units of the Armed Forces of the United States are to be assigned to duty, (2) renewing, or extending the duration of, any such agreement, or (3) making changes which significantly alter the terms of such agreement, shall come into force with respect to the United States, unless the Congress approves that agreement by law, or, if a treaty, the Senate advises and consents to that treaty.

(b) No funds may be obligated or expended under any provision of law to carry out any agreement falling within the terms of subsection (a) of this section, unless such agreement is concluded pursuant to the requirements of that subsection.

(c) For purposes of this section, "a major military installation" means an installation with an assigned, authorized, or detailed personnel strength in excess of five hundred."

In addition to legislation on military base agreements, this writer favors enactment of legislation along the lines of Senator Case's bill regarding the agreement signed by the United States and Portugal concerning the use by the United States of military bases in the Azores.[134] In keeping with the suggestions concerning legislation on military base agreements, however, Senator Case's bill should be revised to provide that the Azores base agreement may either be approved by Congress or submitted as a treaty to the Senate for its advice and consent to ratification. As revised, Senator Case's bill would read as follows:

Commencing thirty days after the date of enactment of this section, no funds may be obligated or expended to carry out the agreement signed by the United States with Portugal, relating to the use by the United States of military bases in the Azores, unless the Congress approves that agreement by law, or that agreement is submitted to the Senate as a treaty and the Senate advises and consents to ratification of that treaty.

In previous sections of this Article we have seen that Congress appears to have the constitutional authority to regulate military base agreements and that under the Constitution congressional-executive agreements and treaties are interchangeable as a modality for concluding such agreements. A provision authorizing conclusion of military base agreements either as treaties or congressional-executive agreements therefore appears compatible with constitutional requirements. Moreover, cogent objections to use of only the treaty procedure in such situations have been made by several commentators.[135] They point out that a military base agreement may require the use of substantial armed force depending ultimately upon powers expressly conferred by the Constitution upon the whole Congress and that it would be contrary to the House's "prerogatives" in this area not to give it an equal role with the Senate in deciding whether such an arrangement should be made.[136] Also, it is contended, it would be a wise political move to secure the House's consent in such cases, since its cooperation is indispensable in appropriating the funds required for United States fulfillment of its obligations under these agreements.[137] Further, it has been argued that the treaty procedure is essentially "undemocratic," since it allows a third of one branch of the Congress to frustrate the wishes of the majority[138] and that use of congressional-executive agreements procedure is preferable because it includes the "branch of the national legislature which, since its representation is based on population, most accurately represents the views of the whole nation. . . ."[139] Finally, as has been contended regarding the base agreements with Portugal and Bahrain, use of the treaty procedure for all military base agreements may give some agreements "a formality which implied an importance and a U.S.

[133]The extent to which a country may, in an effort to avoid an international commitment, invoke the fact that its consent to be bound by an international agreement was in violation of a provision of its internal law regarding competence to conclude international agreements has been a matter of sharp debate. For an effort to resolve this problem, see article 46 of the Vienna Convention of the Law of Treaties, *supra* note 3. For general discussions of the problem see Kearney & Dalton, *The Treaty on Treaties*, 64 AM. J. INT'L L. 495, 530–31 (1970); Kearney, *Internal Limitations on External Commitments-Article 46 of the Treaties Convention*, 4 INT'L LAW. 1 (1969).

[134]S. 445, 92d Cong., 2d Sess. (1972); *see* text at notes 52, 53 *supra*.

[135]E. BYRD, *supra* note 8; McDougal & Lans, *supra* note 75.

[136]McDougal & Lans, *supra* note 75, at 602.

[137]*Id.*

[138]*Id.*

[139]*Id.*

1754

commitment which are neither involved nor desired." [140]

Some may contend that many, if not most, military base agreements should be concluded as executive agreements rather than as treaties or congressional-executive agreements. We have previously seen the argument that military base agreements are within the exclusive power of the President under his authority as Commander-in-Chief, as well as the arguments to the contrary in response. It has also been contended that only the executive branch has substantial knowledge and expertise in the conduct of foreign relations, and Congress, with its cumbersome and time-consuming processes and preoccupation with domestic issues, should not intrude into an area requiring rapid decisions based on an understanding of manifold complexities and complications.[141] Closely related to this argument is the thesis that diplomatic negotiations on national security matters must be conducted in secrecy and that Congress is poorly equipped to meet this requirement.[142] According to this point of view, the friction characteristic among the three branches of government in the domestic area may become a source of "danger" in matters of external relations in which the need for a unified and effective foreign policy is paramount.[143]

It has also been argued that there is no danger in allowing the President to conclude executive agreements on his own authority because Congress possesses more than sufficient power to prevent him from exceeding this authority.[144] Specifically, it is noted that Congress may withhold appropriations or refuse to promulgate implementing legislation where it is needed.[145] Also, it is contended, Congress may override the domestic consequences of an executive agreement by subsequent legislation or achieve the same result by imposing restrictions in advance on the President's power to make particular international agreements.[146] With specific reference to military base agreements, it is pointed out that Congress has sole control over appropriations for the defense budget and, through this control, the power to limit the size of American armed forces.[147] And, it has been suggested, Congress has the power, if necessary, to define narrowly the "interests" the President is empowered to defend, *i.e.* the territory, nations, and individuals whose security is vital to the United States.[148]

Further, it is argued, the President must have the power to enter into military base agreements on his sole authority because world developments occur so rapidly today that there may be insufficient time for extensive negotiations and debate.[149] A situation may arise, the argument continues, in which immediate deployment of American armed forces in a strategic country, by request of that country, is required to protect the security of the United States; such action may be too late if it is dependent upon approval by the Senate or by Congress, and in such a situation the Executive must be able to act in time by use of an executive agreement.[150]

None of these arguments is persuasive. Assuming that the executive branch has the constitutional power and indeed the duty to protect United States interests abroad, the questions who is to have the responsibility of determining what the "interests" of the United States are and which of those interests are worthy of protection by armed force arise. It may be seriously doubted whether these determinations should, as a matter of sound law and policy, be the sole responsibility of the executive branch. If the Spanish Bases Agreement arguably commits the United States to the defense of Spain, for example, should the executive branch be able to decide on its own that protection of that country is vital to American security, especially in light of the controversial nature of Spain's present government? Should the executive branch ever be vested with unfettered power to guarantee the security of a foreign state with American lives and property?

Moreover, it must be remembered that under a military base agreement the United States may have an international *obligation* to come to the defense of a particular country or countries upon the occurrence of certain events.[151] The President should

[140] Memorandum of Law Regarding Conclusion of Agreements With Portugal and Bahrain, *supra* note 49, at 15.

[141] Mathews, *supra* note 70, at 349, 374.

[142] *Id.*

[143] *Id.* at 375.

[144] *Id.* at 377, 388.

[145] *Id.* at 377.

[146] *Id.* at 379.

[147] *Id.* at 382.

[148] *Id.* at 383.

[149] *See, e.g.*, E. Byrd, *supra* note 8, at 174.

[150] *Id.*

[151] Although it is well established that Congress may, acting within the scope of its enumerated powers, override the domestic consequences of a presidential agreement by subsequent legislation, *see, e.g.*, Whitney v. Robertson, 124 U.S. 190 (1888), it has also been equally well established that, on the international level, "[e]very State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty." Declaration of Rights and Duties of States, art. 13, Y.B. Int'l L. Comm'n 286 (1949). There are also numerous decisions of international courts and tribunals upholding this principle. *See, e.g.*, Case Concerning Rights of Nationals of the United States of America in Morocco (France v. U.S.). 1952 I.C.J. 176. Recently, the traditional doctrine has been modified slightly to permit a state to invoke internal law if the internal law concerns "competence to conclude treaties" and the "violation was manifest and concerned a rule of its internal law of fundamental importance." Art, 46, Vienna Convention of the Law of Treaties, *supra* note 3. *See also* note 133 *supra*.

1755

not be permitted to commit the United States to an obligation of such magnitude on the sole basis of his authority as Commander-in-Chief. This, indeed, is the basic thrust of the national commitments resolution and of the War Powers Resolution.

The argument that only the executive has the knowledge and expertise to understand the economic, political, and military complexities of foreign affairs has been raised in the context of the debate of the constitutionality of the war in Vietnam.[152] The response there has been that neither the Executive nor Congress has a monopoly on expertise in this area, and, in any event, the expertise of the Executive can be made available to Congress.[153] This seems to be especially true concerning military base agreements, an area in which Congress should be in at least as good a position as is the executive branch to define the vital interests of the United States.

The argument that a need for quick decisions in the conduct of foreign affairs confers special powers on the Executive has also been made in the dispute over the constitutionality of the Vietnam War.[154] It seems to have validity, if at all, only in a situation in which fighting has actually broken out in a foreign country and American lives or property are in immediate danger. In such a case, however, there is no need for an immediate decision on whether the security of a particular nation or area is of vital interest to the United States. This is precisely the kind of decision that should be taken only after the most serious and exhaustive deliberation, as the national commitments resolution and the War Powers Resolution indicate. Also, although there may be a need for secrecy regarding negotiations on military base agreements, the needs of national security and those of Congress to be informed can both be met through closed hearings in executive session.

It is true that Congress may in effect limit the use of executive agreements through the power of the purse or refusal to enact implementing legislation, but this power may be more apparent than real. If Congress should refuse to appropriate money or to enact legislation implementing an executive agreement, the consequence would be at least serious embarrassment to American foreign policy—such action would strikingly indicate a serious division among officials responsible for the conduct of foreign affairs—and possibly a lessening of the credibility of United States diplomacy. Moreover, enactment of subsequent legislation contrary to the terms of an executive agreement might constitute a violation of an international obligation.

Severe cuts in the defense budget forcing a substantial reduction in the size of American armed forces should be made, it seems, on the basis of a showing that such cuts are required for reasons of economy or to shift funds into other areas. Reductions in the defense budget as an expression of protest to a particular action by the executive branch such as the Spanish Bases Agreement are insupportable.

Especially undesirable would be a unilateral effort by Congress to define those interests of the United States that the President may defend. Unilateral congressional definition of such interests would be a serious interference with the responsibilities of the President in the conduct of foreign relations and would surely give rise to friction between the executive branch and Congress, thereby frustrating attempts to reach a unified and effective foreign policy.

Lastly regarding possible legislation concerning treaties and international agreements other than treaties, this writer believes that the Ervin bill [155] is neither necessary nor desirable. In extensive hearings during 1972,[156] a number of commentators advanced strong objections to an earlier version of the bill based on constitutional and practical considerations. A review and analysis of these objections are beyond the scope of this Article; it suffices for present purposes to state this writer's opinion that the Ervin bill is an example of overkill. There is no apparent need to subject all international agreements or commitments other than treaties to possible disapproval by Congress within a 60 day period. At a minimum such legislation could create immense practical difficulties in the case of agreements whose nature requires that they be immediately effective, such as agreements for emergency relief to disaster victims. Moreover, as we have seen, the dispute between the executive branch and Congress has focused on the use of the executive agreements procedure in concluding military base agreements. Legislation designed to resolve this specific problem seems preferable to the broad brush approach taken by the Ervin bill.

In addition to the passage of legislation, what other action, if any, might be taken concerning treaties and international agreements other than treaties? Perhaps Congress should explore further the executive branch's offer to enter into practical arrangements involving regular consultations between the branches of government. Specifically, the

[152] *See, e.g.*, Statement of Under Secretary of State Katzenbach, *Hearings on S. Res. 151*, *supra* note 19, at 71, 128.

[153] *See, e.g.*, Velvel, *The War in Viet Nam: Unconstitutional, Justiciable, and Jurisdictionally Attackable*, 16 KAN. L. REV. 449, 459 (1968).

[154] *See, e.g.*, Moore, *The National Executive and the Use of Force Abroad*, 21 NAVAL WAR COLLEGE REV. 28 (1969).

[155] S. 1472, 93d Cong., 1st Sess. (1973); *see* text at notes 54, 55 *supra*.

[156] EXECUTIVE AGREEMENTS HEARINGS, *supra* note 15.

Department of State's revision of its Circular 175 procecure [157] may afford a unique opportunity for appropriate congressional leaders and committees to enter into consultations with members of the Office of the Legal Adviser and other officials in the Department of State on procedures to be followed when the United States enters into treaties and other international agreements. As we have seen, the Department's revision of its Circular 175 procedures contains a section on "Considerations for Selecting Among Constitutionally Authorized Procedures" [158] for the making of international agreements. Surely Congress has a strong interest in the formulation of such considerations as well as in being consulted concerning their application to individual international agreements. In particular, representatives from the Senate, the House of Representatives, and the Department of State might attempt to reach agreement on considerations for determining under what circumstances an international agreement should be submitted to the Senate as a treaty. They might decide, for example, that international agreements incorporating a commitment to come to the defense of a foreign country in case of armed attack or a political alliance with that country should be concluded in treaty form.

With due regard to the requirements of secrecy and to the extent feasible, the executive branch and Congress should also strive to inform the general public of the executive branch's intention to negotiate significant new international agreements, consult them concerning such negotiations, and promptly publish the text of all concluded agreements as well as information regarding developments affecting these agreements. As we have seen, the Department's revised Circular 175 procedures contain a provision that would afford the public an opportunity to comment on treaties and other international agreements if, in the opinion of the Secretary of State or his designee, "circumstances permit." [159] This provision, however, is manifestly inadequate. Indeed, it appears to effect no real change in the present situation; the option of affording the public an opportunity to comment on a treaty or other international agreement has always been available to the Secretary of State. At a minimum the Circular 175 procedures should contain a provision indicating that the Secretary of State or his designee will consult with Congress concerning the feasibility of comment by the public.[160]

In the final analysis, the effective use of international agreements in foreign policy may depend primarily upon close cooperation and consultation among the executive branch, Congress, and the public at large. Such cooperation and consultation might also help to bring about an end to the present atmosphere of mutual distrust and alienation prevalent in our society and to facilitate development of a unified and effective foreign policy.

[157]See note 10 *supra*.

[158]Circular 175, 1974 Version, *supra* note 10, § 721.3.

[159]*Id.* § 720.2(d).

[160]It may be noted parenthetically that the issue of public participation in foreign policy transcends the parameters of the Circular 175 procedures and cannot be resolved solely by revision of them. For a number of constructive suggestions on ways to increase the public's participation in foreign policy see Frank, *Enforcing the Public's Right to Openness in the Foreign Affairs Decision-Making Process*, in SECRECY AND FOREIGN POLICY 272 (T. Franck & E. Weisband, eds., 1974), and Bonfield, *Military and Foreign Affairs Function Rule-making Under the APA*, 71 MICH. L. REV. 222 (1972).

151

Appendix M: Congressional Survey

PREVIOUS PAGE BLANK

Introduction

Appendix M, "Congressional Survey," is a study of the views of Members of Congress on the conduct of foreign policy in relation to the role and organization of Congress. The Commission's staff members conducted the study; numerous consultants reviewed and verified the design and validity of the research. The annexes to the Survey Report contain supporting material to explain and amplify the technical features of the Survey. Complimentary material on Congress and foreign policy is to be found in Appendices L and N.

PREVIOUS PAGE BLANK

1759

Contents

Introduction 119

REPORT OF A STAFF SURVEY OF CONGRESSIONAL VIEWS ON THE ORGANIZATION OF GOVERNMENT CONDUCT OF FOREIGN POLICY 121
by R. Roger Majak

Preface 121

CONGRESSIONAL ATTITUDES TOWARD FOREIGN POLICY MAKING. 122

I. Introduction 122

II. How Congress Views Its Foreign Policy Role 123

III. Specific Proposals for Change: Congressional Views 128

IV. The Market for Change: Group Consensus and Disagreement Within Congress 130

V. Conclusions 136

ANNEXES

ANNEX A: Study Purposes and Methods 139

ANNEX B: Selection of Foreign Policy Leaders for Survey Sample 143

ANNEX C: Comparative Tables 144

ANNEX D: Sample Interviews Completed by Month 146

ANNEX E: Data Amplifying Interview Respondent Behavior 147

ANNEX F: Sample Interview Schedule, with Letter from Chairman Robert Murphy Requesting Interviews for the Commission Staff 150

ANNEX G: Results of Second Data Coding 182

ANNEX H: Letters from R. Roger Majak to The Institute for Social Research, University of Michigan, *re* Data Re-coding 183

ANNEX I: Memorandum from the Statistical Research Division, U.S. Department of Commerce, on the Expected Reliability of Estimates Tabulated from a Twenty Percent Sample of Members of Congress. 186

ANNEX J: List of Interview Proposals 188

ANNEX K: Summary of Comments on Sixteen Specific Reform Proposals 189

ANNEX L: Chronology of Events During Time-Period Survey Was Conducted 197

1760

Report of a Staff Survey of Congressional Views on the Organization of Government Conduct of Foreign Policy

R. Roger Majak
March 1975

PREFACE

"Messrs. Darwin and Galton have set the example of circulars of questions sent out by the hundreds to those supposed able to reply. The custom has spread, and it will be well for us in the next generation if such circulars be not ranked among the common pests of life."

William James, *Principles of Psychology,* 1890

No group would seem to have greater reason to share William James' entreaty on the use of questionnaires than the United States Congress. Increasing numbers of researchers, lobbyists, constituents, and journalists are seeking interviews and written questionnaire responses to the point where Members could spend full time doing little else.

Why, then, did the Commission on the Organization of the Government for the Conduct of Foreign Policy (hereafter, "the Commission") choose to survey Congressional attitudes on foreign policy organization?

Whatever their inherent limitations and occasional abuses by both producers and consumers, systematic surveys remain the best available device for discerning the collective attitudes and perceptions of social groups—particularly of diverse and loosely structured groups like legislatures. Even the most perceptive legislative "insider" is reluctant to characterize the mood and views of a legislature in more than the most general terms. And rightly so. Individual impressions even of legislators themselves are bound to distort reality.

This is not to suggest that survey research entirely eliminates bias and distortion. Like any other tool, a survey produces results that are only as good as the techniques with which it is handled. And, no matter how good the handling, the product is never perfect.

The Commission staff took every effort to see that the survey reported in the following pages was conducted in compliance with accepted "scientific" survey research procedures and standards. It feels confident in saying that the results, however imperfect, provide a substantially more complete, reliable, and valid picture of Congressional attitudes and perceptions with respect to foreign policy organization than would have been available to the Commission had such a survey not been undertaken.

The cooperation of respondents and the dedication of skilled interviewers are two essential ingredients in any successful survey. This survey was fortunate to have had both. To these two groups—the Members of Congress interviewed and the members of the Commission staff who conducted the interviews—primary acknowledgement and thanks are due.

While the survey was conducted at least indirectly at the behest of the Congress itself (the Congress having created the Commission and given it a mandate which includes analysis of the organization of Congress with respect to foreign policy), Members had legitimate reasons for refusing to be interviewed. Not only are they hounded for interviews by myriad interlocuters, they also have more formal and, perhaps, important responsibilities which weigh constantly upon their time and energy. Since the other activities in which, at any given moment, they may be involved can affect Members' responses to interview questions, the major legislative activities that were underway during the time the interviews were conducted—most notably the Watergate and impeachment proceedings—are summarized in Annex L.

176

Fortunately, relatively few Members chose to invoke the option of refusing to be interviewed. Of the 106 Members approached for interviews, it was ultimately necessary to find substitute respondents in only 18 cases. Most Members interviewed gave generously of their time—in many cases far more than was requested or expected. In virtually every instance, Members displayed interest in the subject of the interview and in trying to provide sincere responses. For that the Commission and Commission staff are grateful, and hope that the survey results are sufficiently helpful to the Congress fully to justify the time and effort contributed by the Members interviewed.

Three members of the Commission staff conducted the bulk of the interviews: Mrs. Margaret Vanderhye, Mr. William Carter, and Mr. Alan Rudlin. They worked with persistence and patience to conduct their interviews under, at times, trying circumstances. Without their willingness to take tape recorder in hand anytime, anywhere, and sometimes to spend long hours waiting until a busy Congressman's schedule permitted an interview, the project would not have been possible.

Others who played key parts in the project include Dr. Philip Marcus and James Schwartz who performed the tedious but necessary and revealing work of coding comments and elaborations by Members from typed interview transcripts. Mr. Paul McCabe and Ms. Betty Woo performed the even more laborious task of transcribing, correcting, and organizing the transcripts and resulting data. Ms. Anne O'Connor successfully unlocked the mysteries and intricacies of the SPSS Computer Program. With much cooperation and help, particularly from Bob Leroy of the Department of State Foreign Affairs Data Processing Center, the task of tabulating and crosstabulating the interview data was performed by the computer with minimal strain on its human dependents.

Despite numerous other secretarial responsibilities, Mrs. JoAnn Lashley produced and kept organized the voluminous materials and messages required to obtain and conduct the interviews, maintained careful records of the interviews in process, and did her usual meticulous job of typing the resulting reports.

The five Members of Congress who served on the Commission during the interview project deserve special mention. Senator Mike Mansfield, Senator James Pearson, and Congressmen William Mailliard, Peter Frelinghuysen, and Clement Zablocki, wrote and (from time to time) cajoled their colleagues to grant interviews, occasionally risking (hopefully momentarily) personal popularity. The high interview completion rate and genuine cooperation the Commission staff received from most Members it approached for interviews is, in no small degree, a measure of the influence and high esteem these Members (deservedly) enjoy among their Congressional colleagues.

Technical assistance and guidance in conducting the survey was obtained from several members of the professional staff of the University of Michigan's Institute for Social Research. Dr. Donald Matthews helped formulate the design of the study, and with his colleagues, Dr. Warren Miller and Dr. John Kingdon, advised the Commission staff on how to remedy certain data problems encountered in the course of the study. Tracy Berkmans and several members of her team of professional interviewers assisted in the formulation and pretesting of the questionnaire, and in the training of Commission staff in interview techniques. Dr. Roger Davidson, Professor of Political Science at the University of California (Santa Barbara), reviewed and commented most constructively on a draft of this report. While these experts bear no responsibility for the conclusions of this study, whatever level of rigor was achieved in its execution is largely to their credit.

Finally, Francis O. Wilcox, Executive Director of the Commission, and William B. Spong, Jr., General Counsel of the Commission and former United States Senator from Virginia, participated actively in the development and implementation of the survey. Their experienced judgment helped avert numerous pitfalls, and their generous use of personal contacts opened many doors that would otherwise have remained closed. Their enthusiasm for the survey project contributed greatly both to the quality of the effort and the satisfaction of the research team in completing it.

CONGRESSIONAL ATTITUDES TOWARD FOREIGN POLICY MAKING

I. Introduction

The following survey of Congress was undertaken to achieve three objectives. First, the Commission wanted the most precise picture possible of the attitudes of Senators and Representatives toward foreign policy making, especially issues related to the role of Congress. Second, the Commission wished to afford legislators an opportunity to express their views on issues within the Commission's mandate. Finally, the survey afforded an opportunity to acquaint Members of Congress with the work, concerns, and goals of the Commission.

The findings reported here represent the responses of 105 Members of Congress—20 Senators and 85 Members of the House. Interviewees were chosen by means of a statistically random sampling

1762

of all Members. The sample was controlled so that it would represent the entire Congress in party affiliation, geographic region, and foreign policy leadership. (As used in this study, foreign policy leaders include primarily top party leaders and chairmen of foreign policy and foreign policy related Committees and Subcommittees in both Houses. A more detailed definition is provided in Annex B.) Although the sample was not controlled for seniority, it was found to be representative of the House and Senate in its mixture of low-, medium-, and high-seniority legislators. A detailed comparison of the seniority and other characteristics of the sample with those of the House, Senate, and Congress as a whole is presented in Annex C.

Interviews were conducted by trained Commission staff between November, 1973 and July, 1974. The interviews included a variety of questions, some highly structured and specific, others general and open-ended. Respondents were asked for their views concerning the role of Congress and the Executive Branch in the making of foreign policy. Although not questioned in detail about the substance of foreign policy, they were asked to indicate their overall assessment of the direction of United States foreign policy in recent years. Finally, respondents were asked for their opinions concerning a series of sixteen (16) specific proposals for changing procedures in foreign policy making. Not only were interviewees asked whether they would favor the proposed changes; they were also queried concerning their assessment of the likelihood that such changes could be adopted.

The findings of this survey, the Commission staff believes, represent an accurate, if necessarily incomplete, picture of the attitudes of Members of Congress toward the foreign policy-making process. The busy schedules of the respondents severely limited the range of topics that could be covered. Every precaution was taken, however, to assure that the survey conforms with the highest standards of objectivity and accepted scientific procedures. (The methods and procedures are described more fully in Annex A.)

II. How Congress Views Its Foreign Policy Role

To understand the institutional issues surrounding foreign policy making, it is essential to know the attitudes of legislators on Capitol Hill. Their attitudes are a critical factor in the policy-making atmosphere. To the extent that they represent detailed reflection upon events of the past few years, they will continue to be influential as future departures are debated. Their attitudes toward general institutional questions, moreover, will presumably indicate the receptivity of legislators toward specific proposals for changes in structure and procedures.

Specifically, what is the view from Capitol Hill concerning the role of Congress in foreign policy? Is there anything approaching a consensus view of the role and the process of institutional change in Congress to fulfill it. This survey contained several questions dealing directly with Members' views of the role of Congress in foreign policy. In addition, it is possible to draw generalizations about legislators' conception of their role by examining patterns of support and opposition to proposals for specific changes, to be discussed in Part III of this report.

Several generalizations about the Capitol Hill view of Congress' foreign policy role emerge from the survey data:

1. Legislators expressed widespread dissatisfaction with the role they perceive Congress to be playing in the foreign policy field.
2. Legislators generally believe that Congress should play a larger foreign policy role than it now does.
3. The foreign policy role of Congress is limited by the role played by the Executive, which most Members think should have the broader responsibilities. However, Members differ widely over the appropriate nature and extent of the Executive role, not to mention the appropriate limits on Congress' role.
4. Most Members express few detailed ideas about what Congress could or should be doing to fulfill its proper role in foreign policy.

Dissatisfaction with the Congressional role in foreign policy was unmistakable and widespread. Near the end of each interview, respondents were asked the following question:

"Now, by way of summarizing much of what we've talked about, how would you say you feel, in general, about the part Congress as a whole plays with regard to foreign policy? (Are you very satisfied, satisfied, dissatisfied, or very dissatisfied?)"

Responses of the 88 Members who answered this question are summarized in Table 1.

Dissatisfaction with the Congressional role was expressed by a large majority of legislators in both Houses. The foreign policy leaders, who have the

TABLE 1.—SATISFACTION WITH THE ROLE OF CONGRESS IN FOREIGN POLICY MAKING

Satisfaction	*All Respondents*	*House*	*Senate*	*Leaders*	*Non-Leaders*
Satisfied	20.9%	23.9%	22.2%	33.3%	21.6%
Dissatisfied	79.1	76.1	77.8	66.7	78.4
	100.0%	100.0%	100.0%	100.0%	100.0%
n =	(92)	(74)	(18)	(15)	(77)

clearest formal responsibilities in this field, were only slightly more sanguine than their non-leader colleagues.

By contrast, Members appeared to be generally satisfied with the foreign policy role played by the Executive Branch. Dissatisfaction with the role of Congress, however, predominated among legislators, regardless of whether they expressed satisfaction or dissatisfaction with the Executive's role. This finding is related in Table 2.

Dissatisfaction with the role of Congress is prevalent among both supporters and opponents of recent American foreign policy. For the 86 Members who responded to the question about the role of Congress, it was possible to assess the basic attitude toward recent American foreign policy in 58 cases. That assessment was made by systematically examining Members' responses to the following question:

"Emphasizing, now, the content of our foreign policy rather than the institutions of government involved in making it, how do you feel overall about the *direction* American foreign policy has taken during, say, the last two Administrations?"

Attitudes toward recent American foreign policy are compared in Table 3 with Members' views on the role of Congress in foreign policy. As this table illustrates, the Members interviewed were generally supportive of recent American foreign policy.[1]

Regardless of their views, however, they were strongly dissatisfied with the role of Congress in foreign policy.

Several categories of Congressional organization and activity bearing upon foreign policy were discussed with respondents. These topics, and the views of respondents toward them, are summarized in Tables 4 and 5.

It is readily apparent that there is majority satisfaction only with methods of selecting Committee chairmen (suggesting that procedures for dealing with the "seniority system" were no longer much of an issue in Congress, probably as a result of recent subtle changes by the party caucuses).[2] In all other areas probed, a majority of Members were dissatisfied or favored change.

Members who are dissatisfied with the role of Congress tend also to be dissatisfied with the part played by individual Members in foreign policy matters, and vice versa. This relationship is shown in Table 6.

These results suggest that *Members do not make a*

TABLE 2.—MEMBERS' SATISFACTION WITH FOREIGN POLICY ROLE OF EXECUTIVE, CONGRESS

	Role of Executive	
Role of Congress	*Satisfied*	*Dissatisfied*
Satisfied	33.3%	5.3%
Dissatisfied	66.7	94.7
	100.0%	100.0%
	(n = 48)	(n = 38)

TABLE 3.—MEMBERS' SATISFACTION WITH FOREIGN POLICY AND THE ROLE OF CONGRESS

	Foreign Policy Attitude	
Role of Congress	*Generally Support*	*Generally Oppose*
Satisfied	24.5%	11.1%
Dissatisfied	75.5	88.9
	100.0%	100.0%
	(n = 49)	(n = 9)

TABLE 4.—MEMBER SATISFACTION WITH BROAD CHARACTERISTICS OF CONGRESS

Institutional Characteristic	*Percentage Satisfied*	*n*
Selection of Committee Chairmen (4a)	58.5%	(101)
Dispersed and Divided Power and Authority (4d)	40.8	(103)
Congressional Staff Support, Assistance (4j)	40.8	(103)
Congressional Sources, Use of Information (4h)	20.6	(102)
Committee Jurisdictions (4b)	18.8	(101)
Congressional Control of Revenues (4f)	3.9	(103)

TABLE 5.—MEMBERS' DESIRE FOR CHANGE IN BROAD CHARACTERISTICS OF CONGRESS

Institutional Characteristic	*Percentage Desiring "Change"*	*n*
Consultation and Liaison (3e)	76.2%	(101)
Congressional Review and Oversight (3i)	72.4	(98)
Leadership Within Congress (3a)	72.4	(105)
Coordination of Policies and Programs (3g)	64.1	(103)
Leadership Within the Executive Branch (3c)	54.9	(102)
Executive Branch Review and Oversight (3k)	37.1	(97)

[1]In all, the responses of 70 Members were coded "support" or "oppose." Thirty-two responses were inconclusive, and three Members failed to respond to the question. Of the 70 Members whose responses were coded, 59 (84%) generally supported recent foreign policy, while only 11 (16%) generally opposed it.

[2]For a review of these changes, see "Changing Congress: The Committee System," *Annals of the American Academy of Political Science*, January, 1974. This collection of essays, as well as the survey reported here, predates the recent removal of several incumbent House committee chairmen in the 94th Congress.

TABLE 6.—MEMBERS' SATISFACTION WITH ROLE OF CONGRESS AND OF INDIVIDUAL LEGISLATORS

Role of Individual Legislator	*Role of Congress*	
	Satisfied	*Dissatisfied*
Satisfied	77.8%	10.3%
Dissatisfied	22.2	89.7
	100.0%	100.0%
	(n = 18)	(n = 68)

sharp distinction between the organizational aspects of the Congress and the behavior of individual Members as determinants of Congress' foreign policy role. They see the behavior of the Congress as a whole largely as the sum of the actions and initiatives of its individual Members. Thus, they tend to project a new role for Congress more in terms of new patterns of involvement by individual Members than in terms of revised institutional structures or procedures. Few respondents expressed the view that institutional organization and procedures strongly influence individual behavior. On the contrary, many suggested in one way or another that "personality" is what counts. Strong support for several proposed organizational changes, however, suggests that Members do regard such changes as significant whatever their perceptions of the relationship between organizational change and individual action.

What can be said about the nature—the direction—of Congressional dissatisfaction with Congress' foreign policy role?

The pattern of specific reforms supported by the Members interviewed suggests that Congress is most dissatisfied with the information it gets from the Executive Branch, and with its ability to oversee Executive Branch policies and program implementation. Of the seven (7) proposals which received majority support in *both* Houses, all but one were directly aimed at increasing Executive consultation with Congress and Congressional oversight capability.[3]

An exception was the idea (contained in Question 11) of more joint hearings and legislative activity. Such a change would mostly benefit Congress' decision making efficiency going beyond either consultation or oversight. But other proposals directed at Congress' ability to initiate policies and programs, such as creation of a Foreign Affairs Research Institute for Congress, revising the statutory mandate of the CIA to make it responsive to Congress for intelligence analysis,[4] and consolidating foreign affairs legislation within the Foreign Affairs and Foreign Relations Committees, at best received majority support in only one House or the other.

The comments of respondents to general questions about Congress' foreign policy activities give an even clearer picture of Congress' apparent preference for playing an expanded role of checking, limiting, amending, vetoing, and reviewing executive action over more of a policy initiating role:

"By and large I view the Executive Branch as the chief architect of foreign policy."

"But I think that foreign policy initiatives will always come from the Executive Branch and probably should."

"I think it is the proper role of the Executive to implement the broad policy which is created by the Congress and to use whatever discretionary authority is given."

"Congress' role has become more of an overseer of past deeds rather than innovative. . . . ."

"I think there should be definite consultations before the fact."

"When it is an aggressive policy such as a declaration of war, I certainly think that it should be done by the two together."

"I do believe wherever there is a military response, Congress should have a reasonably quick opportunity to review what's been done for the purpose of either supporting it or terminating it."

"I doubt that the Congress could perform any actual role in negotiations, but if it's a far-reaching treaty, the Committee or the chairman and the ranking Member should be advised as to what's going on before any commitment is made so their advice could be put in before the position of the U. S. has jelled."

"I think the role of Congress is up to the people who are involved in the Foreign Affairs Committee and in the case of the Senate, the Foreign Relations Committee."

"I think too often the leadership has followed the President rather than be involved in making decisions with him."

[3]No particular effort was made to include an equal number of policy review and policy initiating proposals. As a result, relatively few proposals directed at improving policy initiating capabilities were included in the list. Since all the proposals, however, were selected more or less at random from a collection of such proposals extracted by the Commission staff from recent publications on Congress, the greater number of policy review proposals included in the list is an indication in itself of the relative lack of attention to increasing Congress' policy initiating role.

[4]The two questions on the CIA (numbers 20 and 21), referring to oversight and reporting, were asked only of the final 62 interviewees. The questions were added when the questionnaire was revised in the middle of the Survey. This information should be regarded as more limited in reliability than the rest of the study findings. Table 2, Annex C compares the 43 interviewees not asked and the 62 asked questions concerning the intelligence agency.

176

"Congress really is in the best position to open up the forums for both experts and others who believe that our policies may be mistaken."

To the extent that any consensus emerges, it is that Congress generally yields responsibility to the Executive for initiating policy and implementing it under authority extended, in one form or another, by the Congress. *The process of granting such authority, helping explore policy alternatives, and evaluating policies and programs once articulated and implemented, is the essence of the Congressional role as defined by most Members.*

Granting of authority by Congress to the Executive Branch, whether formal or informal, tacit or explicit, hinges upon the provision of information to Congress through consultation. Congress cannot perform the role it considers appropriate unless such consultation is thorough, candid, and timely. Members generally consider consultation "timely" when it provides opportunity for Congressional influence and action prior to the implementation of Executive Branch policy plans. Particularly in situations of crisis involving major commitments of public resources, legislators see their role as one of equal partnership with the Executive Branch in decision and policy making. As a practical matter, this partnership may be implemented by prompt Congressional review of actions already taken, but that review must, in the view of most Members, provide opportunity for effective disapproval as well as approval.

As one respondent noted, "We've got to have the tools before we can even discuss what should be (the Congress') role." The most commonly mentioned Congressional "tool" was appropriation of funds for foreign policy. Few Members, however, regarded the appropriations process as an adequate mechanism for fulfilling Congress' role in foreign policy. Many regard it as a "last resort" procedure for exerting Congressional influence. Appropriations generally come too late in the total foreign policy process to permit the kind of bargaining, policy refinement, and prior approval or disapproval that Congress sees as its major role and prerogative. Too often, policies are too close to implementation, and commitments too "hardened," by the time funds are requested and the appropriations process takes over. Thus, the power of withholding funds may come too late to satisfy legislators' desires for a meaningful foreign policy role.

It is not enough, then, to say that Congress views its role as one primarily of "review and oversight." The full meaning and implications of that phrase, as defined by Members, give a much more precise and full understanding of how Congress conceives of its foreign policy role. *The interviews in this study suggest that the kind of "review and oversight" most Members regard as coming closest to fulfilling Congress' appropriate foreign policy role is that which provides information of sufficient quantity and quality to allow Congress to reach its own policy conclusions (as well as learn the conclusions of the Executive Branch); which provides opportunity to participate in shaping and modifying policy (not just acceding to it); which, when necessary and appropriate, enables Congress effectively to check, reverse, or even initiate policies with the cooperation of the Executive Branch.* Only with assurance that these dimensions of "review and oversight" are recognized and available to be exercised can Congress feel it is playing its rightful part in foreign policy making.

Particularly in the House, Members tend to conclude that Congress' role in foreign policy is heavily dependent upon party and committee leaders. As noted earlier, Members generally favor and support greater participation by individual, rank-and-file Members. But they also regard party and committee leaders as those most capable of assuring the availability of sufficient Executive Branch information and consultation to enable the Congress to act on foreign policy matters. Most Members want and expect leaders to serve actively as two-way channels of communication with the Executive Branch—to be capable and willing to provide advice and exert influence upon the Executive Branch as well as elicit information and opportunities for influence for the Congress. They want guidance but not pressure from leaders on foreign policy questions, particularly when Members must vote on important foreign policy legislation. They want consistent, constructive involvement by leaders—not just occasional reactions to crises.

Many Members, however, contended that their leaders should not attempt to act as spokesmen for the entire Congress. "It's a mistake for the leadership to purport to speak for the Congress," one respondent said. "The way in which the White House consults the leadership tends to inhibit the free expression of ideas and with most of the Members of Congress left out in the process."

Most Members interviewed seemed to prefer that their leaders speak *to* them more than *for* them. "The leadership has the responsibility," one respondent suggested, "to set up seminars or whatever it might take" to keep Members informed on consultations with the Executive Branch.

Ideally, at least, policy coordination is regarded as part of Congress' foreign policy role. But some Members have so despaired at Congress' inability to coordinate policy that they are prepared to concede this responsibility to the Executive Branch. "Coordination is one of the things Congress is least able to do," many respondents said. Among such respondents, the view was common that it is only realistic to depend upon the Executive Branch to coordinate policies and programs.

Some Members, however, look to such develop-

1766

ments as a Congressional budget mechanism as possible ways of improving policy coordination by Congress. Members look to party leaders to coordinate Congressional activity in the foreign affairs field—particularly among committees with foreign policy jurisdiction. Some respondents who complained that little such coordination takes place said they regard this as a failure of leadership which directly affects Congress' effectiveness in foreign policy. Several proponents of coordination as part of Congress' foreign policy role noted, however, that the recent tendency to disperse legislative authority among larger numbers of Members, and procedural changes that "open up" the legislative process, tend to complicate rather than facilitate coordination.

Members do not generally regard direct participation in the conduct of foreign policy by legislators (even legislative leaders) as an appropriate part of Congress' over-all foreign policy role. Some Members, however, have come increasingly to support such participation (particularly as advisers to U. S. delegations to multilateral organizations and conferences) as a means of enhancing Congress' access to information on ongoing foreign affairs activities. There is widespread consensus that Congress continues to be severely handicapped in relation to the Executive Branch by lack of such information and independent sources for obtaining it.

A substantial minority of Members interviewed were inclined to assess Congress' role in terms of conflict and conciliation between Congress and the Executive Branch. Many such respondents argued for a return to cooperation and conciliation between the two branches as the best means of achieving what they regarded as an appropriate role for Congress. However, while "confrontation" was rarely mentioned explicitly, most Members interviewed seemed to support increased assertiveness by Congress in the foreign policy area on grounds that cooperation and conciliation have not led to a satisfactory role for Congress.

In summary, what Congress most feels it should be doing with respect to foreign policy—overseeing and reviewing—are among the activities with which it is least satisfied. The process upon which that role depends—consultation and liaison with the Executive Branch—is the focus of greatest Congressional dissatisfaction. With what it considers little in the way of appropriate means for improving the process of consultation and liaison, Congress finds it difficult to imagine in detail, let alone achieve, a fulfilling role in foreign policy. Yet, it continues to hold out hope for a variety of institutional changes that may enable it to improve its role by improving its access to and use of foreign policy information. Greater staff support, a more rigorous budget decision making system, and strengthened leadership seem to be considered the most promising "tools" for a more meaningful Congressional role in foreign policy making.

TABLE 7.—LEGISLATORS' APPRAISALS OF SIXTEEN (16) FOREIGN POLICY PROPOSALS

	*Support**				*Likelihood***			
Subject of Question	*Support*	*Oppose*	*Neutral*	*n*	*Likely*	*Unlikely*	*Unsure*	*n*
More GAO monitoring of overseas programs (10a, b)	84.1%	11.9%	4.0%	(101)	74.0%	22.9%	3.1%	(96)
Executive "unify" budget categories (7a, b)	76.8	17.2	6.0	(99)	57.1	42.9	—	(91)
Define Executive Branch consultation (16a, b)	73.0	17.0	10.0	(100)	70.4	29.6	—	(88)
More joint committee hearings, action (11a, b)	70.0	20.0	10.0	(100)	39.8	58.1	2.1	(93)
Submit Executive Agreements to Congress (8a, b)	62.5	22.2	15.3	(104)	44.3	54.6	1.1	(97)
Executive-Legislative liaison committee (13a, b)	57.4	27.8	14.8	(101)	44.0	53.6	2.4	(84)
Foreign Affairs Research Institute (15a, b)	56.4	34.7	8.9	(101)	53.8	45.1	1.1	(91)
Change CIA statutory mandate (21a, b)***	55.6	35.2	9.2	(54)	39.1	58.7	2.2	(46)
Increase Congressional oversight of CIA (20a, b)***	54.7	26.4	18.9	(53)	62.5	35.4	2.1	(48)
Tie Exec. funds to information, documents (14a, b)	53.0	36.0	11.0	(100)	37.6	62.4	—	(85)
Strengthen foreign policy committees (9a, b)	46.5	40.4	13.1	(99)	34.4	61.3	4.3	(93)
Question period for Secretary of State (6a, b)	45.6	47.6	6.8	(103)	19.2	80.8	—	(99)
Congressional General Counsel's Office (19a, b)	39.2	49.0	11.8	(102)	34.8	63.0	2.2	(92)
Committee on National Security (12a, b)	28.4	59.8	11.8	(102)	13.7	84.2	2.1	(95)
Foreign affairs liaison offices (17a, b)	27.4	60.8	11.8	(102)	13.2	81.3	5.5	(91)
"Department of Peace" (18a, b)	23.5	70.4	6.1	(98)	12.1	87.9	—	(91)

*Respondents who said they would "strongly support" or "support" a proposal are listed as supporters; those who said they would "oppose" or "strongly oppose" are listed as being in opposition. Those who voiced reasons on both sides, or who were unsure of their response, were listed as "neutral."

**Respondents who said the chances of adoption were "extremely likely," "likely," or "50–50" are included in the "likely" category; those who said the chances were "unlikely" or "very unlikely" are listed as "unlikely." The "don't-know" responses are listed as "unsure."

***See footnote 4.

III. Specific Proposals for Change: Congressional Views

The heart of the Congressional Survey consisted of a list of sixteen (16) specific proposals for change in Congress and Congressional-Executive relations. All respondents were asked whether they would generally support or oppose such a proposal, and what they thought chances might be that Congress would approve such a proposal within the next few years. Five categories were provided in each case: "support," "strongly support," "pro-con," "oppose," and "strongly oppose;" "extremely likely," "likely," "50–50," "unlikely," and "extremely unlikely."

As expected, these questions yielded a rich body of information not only about the specific proposals mentioned, but also (through respondents' comments) possible revisions and alternatives to these proposals, along with related underlying attitudes.

The full text of the sixteen proposals is contained in the sample questionnaire schedule (Annex F). For convenience, the proposals also appear separately on a single sheet as Annex J. The following tables refer to the proposals by question number (based upon the revised questionnaire schedule) and by abbreviated description.

Legislators' attitudes toward the sixteen proposals for change are arrayed in Table 7. The level of support for each proposal is indicated, as is the likelihood of adoption as perceived by the respondents. Numbers in parentheses in this table (identified as column "n") represent the number of respondents from whom responses were obtained.

A rank-order summary of attitudes on the various proposals is presented in Table 8. This indicates the innovations considered by the respondents as most worthy of support and most likely to be implemented by Congress. Those viewed as least attractive and likely are also indicated.

The relationship between Members' support or opposition to proposals, and their assessments of the chances for adoption of these same proposals, is intriguing and probably significant. In Table 9 the respondents' support-opposition for the sixteen proposals is compared with their views of the likelihood of adoption. As can be seen, legislators tend to be pessimistic in estimating their colleagues' receptivity to these innovations. However, supporters more often see proposals as "50–50 or better" than do opponents of those proposals. Using the sample findings of support and opposition as a measure of the actual likelihood that each of the proposals will be implemented by Congress, supporters generally come closer to assessing actual likelihood than opponents, with opponents tending greatly to exaggerate actual opposition and supporters tending slightly to exaggerate such opposition.

The data for each proposal generally speak for themselves. An effort is made in the next section (IV) of this report to identify patterns of support, opposition, and prognosis among the proposals, and to assess the meaning of those patterns.

One general observation should, however, be

TABLE 8.—CONGRESSIONAL ATTITUDES TOWARD SIXTEEN PROPOSALS: A SUMMARY

MAJORITY Support *and* Favorable Assessment* in BOTH HOUSES:

- Require Executive to "unify" budget categories (7a, b)
- Give GAO more authority to monitor overseas programs (10a, b)
- More precisely define Executive consultation responsibilities (16a)

MAJORITY Support in HOUSE; MAJORITY Favorable Assessment, BOTH HOUSES:

- Increase Congressional oversight of CIA (20a, b)**

MAJORITY Support and NEAR MAJORITY Favorable Assessment, BOTH HOUSES:

- Require Executive Branch to submit all Executive Agreements (8a, b)
- Establish Executive-Legislative liaison committee (13a, b)

MAJORITY Support in BOTH HOUSES but LESS THAN MAJORITY Favorable Assessment:

- Encourage more joint hearings, legislative activity (11a, b)
- Tie Executive spending to information, documents (14a, b)

MAJORITY Support and Favorable Assessment in HOUSE BUT NOT SENATE:

- Create Congressional Foreign Affairs Research Institute (15a, b)

MAJORITY Support, HOUSE ONLY:

- Bring more foreign policy legislation under jurisdiction of Foreign Affairs, Foreign Relations Committees (9a, b)
- Revise statutory mandate of CIA (21a, b)**

NEAR MAJORITY Support and Favorable Assessment, SENATE ONLY:

- Establish Office of General Counsel to Congress (19a, b)

NEAR MAJORITY Support, HOUSE ONLY:

- Provide for Secretary of State questioning on floor (6a, b)

NO MAJORITY Support or Assessment in EITHER HOUSE:

- Create Foreign Affairs liaison offices staffed by Congress (17a, b)
- Create Cabinet "Department of Peace" (18a, b)
- Combine Armed Services and Foreign Affairs/Foreign Relations Committees to form Committee on National Security (12a, b)

*Favorable Assessment = "50–50 or better" chances.
**See qualifications in footnote 4.

1768

TABLE 9.—LEGISLATORS' SUPPORT OF PROPOSALS AND ASSESSMENT OF THE PROPOSALS' LIKELIHOOD

Proposal (Question Number)	*Support**	*Likelihood*** *Likely*	*Likelihood*** *Unlikely*	*n*
More GAO monitoring of overseas programs (10a, b)	Support	85.2%	15.8%	(85)
	Oppose	16.7	83.3	(12)
Executive "unify" budget categories (7a, b)	Support	62.5	37.5	(76)
	Oppose	26.7	73.3	(17)
Define Executive Branch consultation (16a, b)	Support	87.7	12.3	(73)
	Oppose	23.1	76.9	(17)
More joint committee hearings, action (11a, b)	Support	53.1	46.9	(70)
	Oppose	5.3	94.7	(20)
Submit Executive Agreements to Congress (8a, b)	Support	56.4	43.5	(65)
	Oppose	10.0	90.0	(23)
Executive-Legislative liaison committee (13a, b)	Support	65.3	34.7	(58)
	Oppose	4.8	95.2	(28)
Foreign Affairs Research Institute (15a, b)	Support	82.4	17.6	(57)
	Oppose	9.7	90.3	(35)
Change CIA statutory mandate (21a, b)***	Support	59.2	40.7	(30)
	Oppose	6.7	93.3	(19)
Increase Congressional oversight of CIA (20a, b)***	Support	78.6	21.4	(29)
	Oppose	25.0	75.0	(13)
Tie Exec. funds to information, documents (14a, b)	Support	61.3	38.6	(53)
	Oppose	9.1	90.9	(36)
Strengthen foreign policy committees (9a, b)	Support	56.8	43.2	(65)
	Oppose	8.6	91.4	(40)
Question period for Secretary of State (6a, b)	Support	32.6	67.4	(47)
	Oppose	8.6	91.3	(49)
Congressional General Counsel's Office (19a, b)	Support	78.3	21.6	(40)
	Oppose	—	100.0	(50)
Committee on National Security (12a, b)	Support	39.3	60.7	(29)
	Oppose	1.8	98.2	(61)
Foreign Affairs liaison office (17a, b)	Support	43.5	56.5	(28)
	Oppose	—	100.0	(62)
"Department of Peace" (18a, b)	Support	30.4	69.6	(23)
	Oppose	4.9	95.1	(69)

*Excludes "Pro/Con" and "don't-know" responses.
**"Likely" includes "50–50 or better" responses.
***See footnote 4.

made here. Difficulty was encountered in getting some respondents to commit themselves on these specific proposals. Many were hesitant to take a clear stand. Many of those who did take a stand were careful to qualify or place contingencies upon their responses.

This hesitancy was probably due in part to lack of advanced opportunity to study the proposals, general cautiousness, and other factors. Viewed in conjunction with respondents' comments about the chances of Congressional approval of the proposals (also summarized in Annex K), their hesitancy to take a firm stand on the proposals becomes significant.

Annex K contains a summary of respondent comments on each of the proposals, including commonly mentioned caveats, grounds for support or opposition, and suggested alternatives.

At least two patterns emerge from the summary of respondent comments about the chances of Congressional approval of the proposals. *One is the considerable weight respondents gave to Executive Branch views in assessing chances for change in Congressional organization and Congressional-Executive relations* relating to foreign policy matters. Such a heavy reliance upon Executive "cues" on reform proposals contrasts sharply with a survey of the "reform marketplace" in the House a decade ago.[5] In that earlier study, belief in the need to strengthen Congress vis-a-vis the Executive was a strong motivating force among legislators of all political persuasions, with Members apparently giving little credence to the views of outsiders, especially in the Executive Branch. The reliance upon Executive cues indicated in the present study probably stems from the fact that so many of the proposals (at least ten of the sixteen) directly affect Executive organization and functioning.

A second pattern which emerges from respond-

[5]Roger H. Davidson, *et al.*, *Congress in Crisis* (Belmont, Calif.: Wadsworth, 1966), 70–73.

1769

ents' comments is the rather *limited extent to which respondents seem aware of the positions of influential Members and pressure groups with respect to these proposals.* The established importance of "cues" from influential Members and groups in determining some Members' support or opposition to proposals for change,[6] combined with the apparent lack of awareness about which influential Members or groups might be "pushing" or opposing particular proposals, suggest that the survey results may be quite "elastic."

One reason, of course, that Members might be unaware of the position of influential Members and groups is that such influentials may not yet have taken public positions either strongly for or against the proposals mentioned. Without such public positions by influential Members and groups (of which the Commission, itself, may prove to be one), it is difficult to assess, finally, the strength of the proposals. Since existing procedures (formal and informal) in both Houses tend to protect vociferous minorities by permitting them to block consideration of measures, ultimate opposition by influential Members to particular proposals—even those with substantial support as measured by the survey—could preclude favorable action. On the other hand, lack of widespread support does not rule out ultimate Congressional acceptance. Such proposals could "catch on" if brought before the Congress for decision by an influential Member (particularly in the Senate) or with strong support of an influential group (particularly in the House). Consequently, in many instances, final Member preferences cannot be known until decision is imminent and all signals from influential Members and groups are clear. "Snowball" support or opposition can be expected as the time for decision draws near and key Members and groups take their stands.

IV. The Market For Change: Group Consensus and Disagreement Within Congress

A recent study concluded that change in Congress is governed by a complex "reform market" based on the institution's resistance to change and limitations upon the resources, both real and political, that can be expended to bring about institutional change.[7] The priority placed upon change varies from Member to Member and group to group within Congress based upon differing interests and goals. The result is a process of bargaining among legislative "entrepreneurs" over institutional change—a process similar to the bargaining and trading that occurs in economic marketplaces.

Using this analogy, who are the entrepreneurs of change and of constancy in Congress? What "values" do Members and major groups of Members attach to changes in Congress, and what "costs" are they willing to incur to achieve or resist them? On what particular proposed changes affecting Congress' role in foreign policy is "trading" most lively, and where are the differences in assessment with respect to these changes?

The survey data provide some answers to these questions for eight broad groups within the Congress: Members of the House and Members of the Senate, foreign policy leaders and non-leaders, more senior Members and less senior Members, Republicans and Democrats.

Among the three factors—party, leadership position, and House—*party* accounts most for differences in attitude. Differences of view between leaders and non-leaders is less, though still substantial. Overall, the smallest difference of viewpoint (i.e., the greatest consensus) exists between House and Senate. Several interesting exceptions to these generalizations, however, make it worthwhile to look at each of these groups individually.

Partisan differences seem to revolve around attitudes toward the Executive Branch and its role in foreign policy. While a majority of Democrats expressed dissatisfaction with the role of the Executive Branch in foreign policy and favored change in the nature of Executive Branch leadership, a majority of Republicans took the opposite view of both items. (See Table 10.) This partisan split with respect to the Executive Branch transcends the consensus between the two parties in their dissatisfaction with the role of Congress.

Among both Democrats and Republicans, Members who are satisfied with the role of one branch tend to be satisfied with the other. Moreover, Democrats who are dissatisfied with one branch tend to be dissatisfied with both. But Republicans who are dissatisfied with Congress tend, nevertheless, to be satisfied with the Executive Branch.

In general, Democrats expressed slightly greater dissatisfaction and support for change than Repub-

TABLE 10.—PARTY AFFILIATION AND SATISFACTION WITH THE ROLE OF CONGRESS AND THE EXECUTIVE

	Role of Congress		*Role of Executive*	
	Democrat	*Republican*	*Democrat*	*Republican*
Satisfied	21.2%	20.6%	44.2%	73.5%
Dissatisfied	78.8%	79.4%	55.8%	26.5%
	100.0%	100.0%	100.0%	100.0%
	(n = 52)	(n = 34)	(n = 52)	(n = 34)

[6]See for example, John W. Kingdon, *Congressmen's Voting Decisions*, New York: Harper & Row, 1973.

[7]Davidson, *et al.*, p. 167.

1770

licans, even with respect to the leadership in Congress which, of course, is Democratic. A total of 87.3 percent of the Democrats interviewed said they favored change in the foreign policy role of the Congressional leadership, while only 68.3 percent of the Republicans took that view.

The basic partisan split over the role of the Executive and Executive leadership in foreign policy is further reflected in the more specific questions and proposals put to the respondents. Though the majority of respondents of both parties, for example, said they would like to change Congressional review and oversight of programs and policies, substantially more Republicans than Democrats said they opposed such "change"—presumably reflecting a reluctance on the part of Republicans to criticize Executive conduct of foreign policy, even indirectly. Similarly, while majorities in both parties said they were dissatisfied with the information available to Congress, substantially more Republicans than Democrats said they were "satisfied." Comments by the latter respondents indicate the basis for their satisfaction is largely the view that the Executive Branch provides Congress with all the information it needs and desires.

As might be predicted from these general findings, the sharpest disagreements between the parties occurred over specific proposals involving major changes and constraints on the Executive Branch. As Table 11 indicates, the largest partisan split occurs on the idea of tying Executive Branch spending to full disclosure of information and documents. (A similar proposal had been vetoed by the President shortly before interviewing was begun.) Large partisan splits also appear on the proposals for questioning of the Secretary of State on the floor of the House and Senate; establishing an Office of General Counsel to Congress with authority to litigate (presumably most often against the Executive Branch); and increasing oversight of the CIA.[8] On those and two other proposals (revising the statutory mandate of the CIA [9] and creating a Congressional Foreign Affairs Research Institute), a majority of Democrats expressed support while a majority of Republicans expressed opposition.

Only one proposal—for more joint hearings and legislative action—drew more support from Republicans than from Democrats. Although the interparty split was not wide, it is probable that the lower Democratic support stems from the fact that Democrats, as the majority party, have a somewhat keener proprietary interest in the Congressional committees and their prerogatives. Joint action on hearings and legislation is typically viewed, whether accurately or not, as a threat to the autonomy of committees in the two chambers. Another possible explanation would be that more Republicans took the Executive Branch view that there is duplication in separate Congressional hearings, and that it would be more convenient if busy Executive officials were required to appear only once before joint committee hearings.

If Democrats and Republicans differed over the merits of many of the specific proposals, they were in substantial agreement concerning the proposals' chances of adoption. (See Table 11.) Republicans were somewhat less sanguine than Democrats about budget reform, establishment of a litigating General Counsel for Congress, and increased CIA oversight. They were more positive than Democrats in assessing chances for change in the CIA mandate.[10] But even these differences were less than startling. On all other proposals, the two parties were remarkably similar in their collective assessments.

In assessing the viability of proposed innovations, particular attention must be paid to the preferences of Congressional leaders. This is true not only because of the formal powers exercised by such leaders, but also (as we have seen) because of the significant role which leaders play in providing cues for other Members. The opinions of Congressional foreign policy leaders and non-leaders toward the sixteen proposals are arrayed in Table 12. It is noteworthy that our sample of leaders gave less support to the list of proposals than did their non-leader colleagues. The average proposal received majority support (55.0 percent) from the 87 non-leaders in our sample. Support from the 18 leaders was 10 percentage points lower (45.6 percent for the average proposal in the list).

Any assessment of proposed changes must reckon with this basic fact of reform politics—a phenomenon noted in earlier studies. Although leaders have considerable influence over the fate of proposals for change, they are less likely than their non-leader colleagues to favor such changes.

Several differences between leaders and non-leaders are especially noteworthy. The widest cleavage occurred on the proposal for more authority to allow GAO to monitor foreign programs. Although large majorities in both groups supported the idea, leaders were distinctly less inclined to back it than were non-leaders. Perhaps some of the leaders saw the GAO as a potential rival to their committees and staffs in performing oversight functions overseas. Committee prerogatives probably underlay the other proposals which found leaders and non-leaders relatively far apart: for example, the proposals for joint hearings; for combining juris-

[8]See footnote 4.

[9]See footnote 4.

[10]See footnote 4.

1771

TABLE 11.—LEGISLATORS' SUPPORT FOR SIXTEEN FOREIGN POLICY PROPOSALS, BY PARTY

Subject of Questions (Question #)	*Support (% "Support")**			*Likelihood (% "50–50 or Better")**		
	Dem	*GOP*	*n*	*Dem*	*GOP*	*n*
More GAO monitoring of overseas programs (10a, b)	91.1%	75.6%	(101)	75.9%	71.4%	(96)
Executive "unify" budget categories (7a, b)	80.0	72.7	(99)	60.8	52.5	(91)
Define Executive Branch consultation (16a, b)	75.0	70.5	(100)	68.0	73.7	(88)
More joint committee hearings, action (11a, b)	66.1	75.0	(100)	36.5	43.9	(93)
Submit Executive Agreements to Congress (8a,b)	69.0	54.3	(104)	42.6	46.5	(97)
Executive-Legislative liaison committee (13a, b)	58.9	55.6	(101)	46.8	40.5	(84)
Foreign Affairs Research Institute (15a, b)	62.1	48.8	(101)	55.8	51.3	(91)
Change CIA statutory mandate (21a, b)**	61.3	47.8	(54)	33.3	47.4	(46)
Increase Congressional oversight of CIA (20a, b)**	65.6	38.1	(53)	76.7	38.9	(48)
Tie Exec. funds to information, documents (14a, b)	71.9	27.9	(100)	40.4	34.2	(85)
Strengthen foreign policy committees (9a, b)	47.4	45.2	(99)	34.0	35.0	(93)
Question period for Secretary of State (6a, b)	53.4	35.6	(103)	16.4	22.7	(99)
Congressional General Counsel's Office (19a, b)	51.8	23.9	(102)	46.0	21.4	(92)
Committee on National Security (12a, b)	26.8	30.4	(102)	11.3	16.7	(95)
Foreign affairs liaison offices (17a, b)	29.8	24.4	(102)	13.7	12.5	(91)
"Department of Peace" (18a, b)	32.7	11.6	(98)	13.2	10.5	(91)
Average for Sixteen Proposals	58.9	46.1		42.0	38.7	

*For explanations of these categories, see the notes accompanying Table 7.
**See footnote 4.

TABLE 12.—LEGISLATORS' SUPPORT FOR SIXTEEN FOREIGN POLICY PROPOSALS, BY LEADERSHIP STATUS

Subject of Questions (Question #)	*Support (% "Support")**			**Likelihood (% "50–50 or Better")**		
	Ldr.	*Non-L*	*n*	*Ldr.*	*Non-L*	*n*
More GAO monitoring of overseas programs (10a, b)	64.7%	88.1%	(101)	64.7%	75.9%	(96)
Executive "unify" budget categories (7a, b)	72.2	77.8	(99)	38.9	61.6	(91)
Define Executive Branch consultation (16a, b)	70.6	73.5	(100)	46.2	74.7	(88)
More joint committee hearings, action (11a, b)	52.9	73.5	(100)	18.8	44.2	(93)
Submit Executive Agreements to Congress (8a,b)	66.7	61.6	(104)	56.3	42.0	(97)
Executive-Legislative liaison committee (13a, b)	41.2	60.7	(101)	25.0	47.2	(84)
Foreign Affairs Research Institute (15a, b)	44.4	59.0	(101)	41.2	56.8	(91)
Change CIA statutory mandate (21a, b)	55.6	55.6	(54)	37.5	39.5	(46)
Increase Congressional oversight of CIA (20a, b)	40.0	58.1	(53)	50.0	65.0	(48)
Tie Exec. funds to information, documents (14a, b)	47.1	54.2	(100)	38.5	37.5	(85)
Strengthen foreign policy committees (9a, b)	47.1	46.3	(99)	31.3	35.1	(93)
Question period for Secretary of State (6a, b)	33.3	48.2	(103)	5.9	22.0	(99)
Congressional General Counsel's Office (19a, b)	41.2	38.8	(102)	40.0	33.8	(92)
Committee on National Security (12a, b)	11.8	31.8	(102)	—	16.5	(95)
Foreign affairs liaison offices (17a, b)	11.1	31.0	(102)	6.7	14.5	(91)
"Department of Peace" (18a, b)	29.4	22.2	(98)	21.4	10.4	(91)
Average for Sixteen Proposals	45.6	55.0		32.7	42.3	

*For explanations of these categories, see the notes accompanying Table 7.

dictions of the Foreign Affairs/Foreign Relations Committees with Armed Services; for establishing an Executive-Legislative liaison committee; and for creating liaison offices in Executive agencies. Although such arrangements might conceivably strengthen the foreign policy leaders on the Hill, these leaders have yet to be convinced of the merits of the proposals.

One of the most interesting differences between leader and non-leader views emerged on the question of establishing a standing Executive-Legislative liaison committee to consult on foreign policy matters and arbitrate disagreements over appropriate security classification of information (Question #13a.). While a majority of non-leaders support this proposal, less than a majority of leaders support it. In view of the fact that foreign policy leaders would presumably serve and play an important role

1772

on any such liaison committee, lack of leadership enthusiasm for the idea must raise doubt about its practicability.

Major differences of view between leaders and non-leaders also occur on the question of increased CIA oversight and creation of a Congressional Foreign Affairs Research Institute—proposals which gained support from a majority of non-leaders, but only a minority of leaders.[11] Leaders also showed less enthusiasm than non-leaders for giving more authority to GAO, encouraging more joint hearings and legislative activity, and combining Armed Services and Foreign Affairs Committees, though majorities of the two groups concurred and the differences were only in the size of those majorities.

Likewise, leaders were more pessimistic than non-leaders in estimating the chances of adopting the list of reorganization proposals. Fewer leaders than non-leaders thought that the proposals' chances were, on the average, better than even. (Only 33 percent of the leaders estimated that the average proposal had a 50–50 chance or better of adoption, compared to 42.3 percent of the non-leaders who gave similar estimates.) These findings are detailed in the right-hand columns of Table 12.

About the only item on which leaders were significantly more optimistic than non-leaders was the proposed requirement that all Executive Agreements be submitted for Congressional consideration. While only 42 percent of the non-leaders saw chances for this proposal as "50–50 or better" in the next few years, more than half (56.3 percent) of the leaders felt this way. The only other proposals which half or more of the leaders interviewed saw as having "50–50 or better" chances were giving more authority to GAO (Question #10) and increasing Congressional oversight of the CIA (Question #20).[12] A majority of non-leaders considered chances of creating a Congressional Foreign Affairs Research Institute and defining more precisely the Executive Branch's consulting responsibilities as "50–50 or better," while less than a majority of leaders thought so.

In the list of more general propositions pertaining to Congressional organization and procedures (Questions 3 and 4) leaders and non-leaders displayed differences not unlike those which emerged in their reactions to the specific proposals. Non-leaders tend, on the whole, to be more restive and more supportive of generalized changes than foreign policy leaders in Congress. These attitudes are summarized in Table 13.

The problem of committee jurisdictions produced the sharpest disagreement between leaders and non-leaders. An overwhelming majority of non-leaders advocated changes in jurisdictions, while barely half of the leaders felt the same way. Other items in which non-leader dissatisfaction greatly exceeded that of the leaders pertained to the adequacy of Executive Branch consultation with Congress on foreign policy matters, and the more generalized role of the Executive in foreign policy. In most of the other general areas probed, leaders and non-leaders took quite similar views.

TABLE 13.—DISSATISFACTION AMONG CONGRESSIONAL LEADERS AND FOLLOWERS

Item (Question #)	*Ldr.*	*Non-L*	*n*	*(Response type)**
Role of Congress (23)	55.6%	70.1%	(88)	1
Role of the Executive (24)	22.2	40.2	(88)	1
Congressional leadership (3a)	66.7	73.6	(105)	2
Executive leadership (3c)	58.8	54.1	(102)	2
Cong'l-Exec consultation (3e)	56.3	80.0	(101)	2
Cong'l policy coordination (3g)	81.3	60.9	(103)	2
Cong'l review/oversight (3i)	76.5	71.6	(98)	2
Exec review/oversight (3k)	50.0	34.6	(97)	2
Selection of cmte. chm. (4a)	38.9	41.2	(101)	1
Committee jurisdictions (4b)	56.3	84.7	(101)	1
Power dispersion in Cong. (4d)	52.9	59.3	(103)	1
Cong'l revenue controls (4f)	100.0	95.4	(103)	1
Cong'l information use (4h)	76.3	80.0	(102)	1
Cong'l staff support (4j)	56.3	59.8	(103)	1
Average Dissatisfaction	60.6	64.7		

*Response Type: 1 = response of "dissatisfied" or "very dissatisfied." 2 = response of "should change" (rather than "continue").

Although non-leaders tend to express less satisfaction and greater support for generalized change than foreign policy leaders, there were two intriguing exceptions. A majority of both groups said they desired change in the way Congress coordinates action on policies and programs. But leaders, on whom the burden of coordination mainly falls, were significantly more supportive of change in this area than were non-leaders. This finding, which was confirmed by respondents' comments, suggests that leaders were especially interested in finding remedies to this problem. Leaders were also more interested in changing Executive review of programs than were their non-leader colleagues.

Views differed very little between House and Senate interviewees. On the generalized questions, differences appeared only on questions of committee jurisdiction and Congressional leadership. Respondents from the House showed significantly less satisfaction with committee jurisdictions than did Senators, probably because of the attention focused on jurisdictional reform by the House Select Committee on Committees (the Bolling Committee), which had no Senate counterpart. House Members also expressed greater support for change in the nature of their own leadership with

[11] See footnote 4.
[12] See footnote 4.

1773

respect to foreign policy matters. Though a majority from both Houses took this position, many Senate respondents commented favorably on the foreign policy activities of the current Senate leaders (Senator Mansfield and Senator Scott) and endorsed their active role as Members of the Foreign Relations Committee. A substantially larger majority of House Members supported a change in leadership activity on foreign policy. House respondents were much less complimentary concerning the foreign policy role played by current House leaders, though some Members noted that these leaders were handicapped by not being Foreign Affairs Committee Members.

House and Senate views differed most strikingly on three of the specific proposals. (See Table 14.) Senate support for requiring all Executive Agreements to be submitted to Congress for approval was substantially higher than House support—presumably because of greater Senate concern and involvement with treaties and Executive Agreements. On the other hand, more House than Senate Members favored increased joint hearings and legislative activity. Many House Members commented, however, that a major problem with the proposal was the lack of enthusiasm and participation by Senators—a caution somewhat borne out by lower Senate support for the proposal. The greater House support for bringing more foreign policy legislation under Foreign Affairs and Foreign Relations Committee jurisdiction probably reflects the Bolling Committee support for such a proposal in the House. Senate support was probably curtailed by awareness of existing possibilities for multiple committee referrals in the Senate, a fact which makes committee jurisdictional boundaries more flexible and less problematic in the Senate.

Somewhat higher House support for a Congressional Foreign Affairs Research Institute probably reflects greater issue specialization and fewer staff per Member in the House than in the Senate. Greater Senate support for creating an Office of General Counsel to Congress almost surely stems from the fact that Senate attention to the proposal, and legislation making it possible, grew out of litigation pertaining to Senator Mike Gravel's (D-Alaska) release of portions of the Pentagon Papers, as well as Senator Edward Kennedy's (D-Massachusetts) successful suit in the courts disputing the Administration's interpretation of the "pocket veto" concept.

Finally, a word about seniority. As noted earlier, although no effort was made to control for seniority in drawing the interview sample, the final sample is representative of the Congress as a whole with respect to Member seniority. The seniority of the Members interviewed was reviewed, and the Members divided on that basis into three equal groups: (a) those with 1 to 6 years seniority (37 Members); (b) those with 7 to 12 years seniority (35 Members); and (c) those with 13 or more years seniority (33 Members). An analysis of the general attitudes of these seniority groups reveals some interesting patterns.

No observer of Congress would be surprised to see that satisfaction with the *status quo* and opposition to change are greatest among the most senior Members. The data from this survey generally confirm that platitude, as Table 15 demonstrates. The only matter on which satisfaction actually *decreased* with seniority was the adequacy of Congressional controls over revenues and expenditures (but satisfaction on this score was relatively rare at all seniority levels).

Some Congress-watchers may be surprised to learn, however, that dissatisfaction and support for change were often more pronounced among middle-seniority legislators than among those with the least seniority. While this tendency is not striking in its magnitude, it is nonetheless consistent, as shown in Table 15. It is apparently not uncommon for frustration to build as the Member gains greater experience on Capitol Hill—until, of course, the Members actually assume a leadership post.

The most dramatic declines in dissatisfaction and support of change with increasing seniority occur in the areas of Congressional leadership, consultation and liaison with the Executive Branch, and staff support and assistance. The first of these hardly needs explanation. The most senior Members tend to be leaders—particularly committee leaders—and, therefore, to identify themselves with "the leadership." In view of that, it is surprising only that so many Members with highest seniority (60.6 percent) said they favored change in the activities of Congressional leaders in foreign policy matters.

With respect to consultation and staff support, the sharp increase in satisfaction with increasing Member seniority almost certainly indicates both of the greater information available to more senior Members, usually by virtue of their privileged committee positions, and the inadequate flow of that information to less-senior and influential Members. Lacking adequate access to Executive Branch information or adequate staff support to ferret out such information, the less senior Members, especially in the House, experience acute frustration. Their feelings are assuaged only when they gain sufficient seniority to command frequent Executive consultation as well as greater staff support.

While the differences in attitude among seniority groups are instructive, the relative absence of sharp variation is probably more significant. As Tables 15 and 16 show, all seniority groupings display widespread dissatisfaction and support for change in all categories of Congressional activity included in our

177

TABLE 14.—LEGISLATORS' SUPPORT FOR SIXTEEN FOREIGN POLICY PROPOSALS, BY HOUSE

	*Support (% "Support")**			*Likelihood (% "50–50 or Better")**		
Subject of Questions (Question #)	*House*	*Senate*	*n*	*House*	*Senate*	*n*
More GAO monitoring of overseas programs (10a,b)	85.7%	76.5%	(101)	96.0%	73.4%	(96)
Executive "unify" budget categories (7a, b)	75.0	84.2	(99)	55.6	63.2	(91)
Define Executive Branch consultation (16a, b)	72.0	77.8	(100)	72.9	61.1	(99)
More joint committee hearings, action (11a, b)	73.2	55.6	(100)	42.9	25.0	(93)
Submit Executive Agreements to Congress (8a,b)	57.6	84.2	(104)	44.3	44.4	(97)
Executive-Legislative liaison committee (13a, b)	57.8	55.6	(101)	43.5	46.6	(84)
Foreign Affairs Research Institute (15a, b)	58.5	47.4	(101)	57.5	38.9	(91)
Change CIA statutory mandate (21a, b)**	60.0	33.3	(54)	41.0	28.6	(46)
Increase Congressional oversight of CIA (20a, b)**	60.0	37.5	(53)	65.0	50.0	(48)
Tie Exec. funds to information, documents (14a, b)	50.0	66.7	(100)	36.8	41.2	(85)
Strengthen foreign policy committees (9a, b)	51.3	26.3	(99)	39.5	11.8	(93)
Question period for Secretary of State (6a, b)	48.2	33.3	(103)	19.5	17.6	(99)
Congressional General Counsel's Office (19a, b)	37.3	47.4	(102)	32.9	43.8	(92)
Committee on National Security (12a, b)	28.6	27.8	(102)	12.7	18.8	(95)
Foreign affairs liaison offices (17a, b)	31.3	10.5	(102)	16.0	—	(91)
"Department of Peace" (18a, b)	22.8	26.3	(98)	12.3	11.1	(91)
Average for Sixteen Proposals	54.3	49.4		41.6	36.2	

*For explanations of these categories, see the notes accompanying Table 7.
**See footnote 4.

TABLE 15.—SENIORITY AND INSTITUTIONAL SATISFACTION (FIGURES % SATISFIED/DISSATISFIED)

			Seniority	
	All Respondents	*1–6 Years*	*7–12 Years*	*13+ Years*
Selection of Committee Chairmen				
(n = 101)				
Satisfied	58.4	55.6	57.1	63.3
Dissatisfied	41.6	44.4	42.9	36.7
Committee Jurisdictions				
(n = 100)				
Satisfied	19.0	11.1	20.6	26.7
Dissatisfied	81.0	88.9	79.4	73.3
Division of Power and Authority				
(n = 102)				
Satisfied	41.2	36.1	40.0	48.4
Dissatisfied	58.8	63.9	60.0	51.6
Control of Revenues/Expenditures				
(n = 103)				
Satisfied	3.9	8.1	2.9	—
Dissatisfied	96.1	91.9	97.1	100.0
Obtain and Handle Information				
(n = 102)				
Satisfied	20.6	21.6	14.3	26.7
Dissatisfied	79.4	78.4	85.7	73.3
Staff Support and Assistance				
(n = 103)				
Satisfied	40.8	24.3	51.4	48.4
Dissatisfied	59.2	75.7	48.6	51.6
		(n = 37)	(n = 35)	(n = 33)

1773

questions (except for "selection of committee chairmen").

In no instance does a majority of any seniority group differ from the majority view of all respondents—a good indication that among Members of differing seniority status consensus outweighs discord with respect to general Congressional activities relating to foreign policy issues.

V. Conclusions

What, then, can be said in summary about the general "market" for change in Congress, and specific directions for change suggested by the survey?

A comparison of responses to general questions and related specific proposals indicates that consensus tends to break down, and disagreement to increase, as proposals for change move from the more general to the more specific. General consensus, therefore, must be extremely strong if there is any reasonable chance of sufficient consensus on specifics. It is on this basis that the following assessments are made.

Competition of views and interests is likely to be most intense with respect to *power distribution* and *staffing* within the Congress. General views on these two subjects are more closely divided throughout the Congress than any of the other aspects of Congressional activity covered by the survey.

Members of the Senate can be expected to be less supportive of recommendations that would change the distribution of power in the Congress, probably because influence is more widely shared in the Senate than in the House. However, no very dramatic group cleavages exist within the Congressional "marketplace" on this issue.

Staffing—itself a major ingredient of power and influence in Congress—is a somewhat different story. Proposed staffing changes tend to pit the interests of less senior Members against more senior ones. Any recommendations that would have the

TABLE 16.—SENIORITY AND INSTITUTIONAL CHANGE AFFECTING FOREIGN POLICY (FIGURES % CHANGE/CONTINUE)

			Seniority	
	All Respondents	*1–6 Years*	*7–12 Years*	*13+ Years*
Congressional Leadership				
(n = 96)				
Change	79.2	84.8	87.5	64.5
Continue As Is	20.8	15.2	12.5	35.5
Executive Leadership				
(n = 95)				
Change	58.9	59.4	63.6	53.3
Continue As Is	41.1	40.6	36.4	46.7
Consultation/Liaison				
(n = 91)				
Change	84.6	90.9	96.2	68.8
Continue As Is	15.4	9.1	3.8	31.3
Policy Coordination				
(n = 33)				
Change	79.5	82.8	82.1	73.1
Continue As Is	20.5	17.2	17.9	26.9
Congressional Review				
(n = 88)				
Change	80.7	79.3	84.8	76.9
Continue As Is	19.3	20.7	15.2	23.1
Executive Review				
(n = 58)				
Change	62.1	65.0	57.9	63.2
Continue As Is	37.9	35.0	42.1	36.8
		(n = 37)	(n = 35)	(n = 33)

1776

effect of enhancing staff support of less senior Members at the expense of more senior ones would likely receive numerical majority support in Congress, but be subject to powerful resistance from many of the more influential Members of both Houses. Even recommendations that would increase or reduce staff support for all Members, regardless of seniority, party, leadership status, or House, seem likely to be controversial and not easily negotiated because of close divisions of views within all these groups.

At the other end of the spectrum, proposals for changing Congress' ability to monitor and control total revenues and expenditures through improved budgeting procedures, and to enhance its information collecting and handling capabilities, are likely to be highly "negotiable." At most, some Republican and Senate defense of the *status quo* with respect to information processing can be expected. Even in those quarters, however, Members seem receptive to any reasonable proposal for improvement.

The outlook for other areas of Congressional activity covered by the survey is less clear. Most topics involved substantial but less than overwhelming support or opposition, and major group differences of views, making controversy without minimal consensus likely. With respect to Congressional leadership, for example, House Democratic non-leaders tend to favor change, while fewer Senators, leaders, and Republicans feel that way. Neither the support nor the opposition is overwhelming, making outcomes problematic except that sharp group disagreements will develop over particulars.

With respect to Executive leadership, support for change is more uniform from group to group within Congress (except for relatively less Republican than Democratic support). The likelihood of partisan disagreement, combined with relatively narrow consensus in other groups, suggests that recommendations in this area would receive a most uncertain Congressional reception. Similarly, proposals altering the dispersion of power would create sharp leader-nonleader and partisan disagreement; proposals affecting Congressional and Executive review would stimulate partisan disagreement; and jurisdictional change would encounter leader-nonleader and Senate-House disagreement. In all these areas, consensus is limited enough to raise doubt that outcomes on specific proposals could be predicted. In any case, considerable controversy would have to be expected along the lines described.

Such conflicts are to be expected insofar as the proposed innovations affect the distribution of power within Congress. What is perhaps most notable about the findings, however, is the broad consensus it reveals on the general proposition that change is needed. As individuals with a personal stake in the strength of Congress, legislators are clearly unhappy with legislative-Executive relationships as they have prevailed in foreign affairs in the recent past. And they are willing, at least at a generalized level, to endorse innovations in a wide range of procedures. The challenge of reformist politics, of course, is to capitalize on the Members' institutional loyalties while minimizing internal dissentions among factions on Capitol Hill.

The greatest value of a survey such as this one is less in predicting success or failure for concrete proposals, than in identifying basic patterns of opinion which will affect the "marketplace for change," perhaps for years to come. These are the facts of life which anyone proposing change will do well to keep firmly in mind. Among the underlying patterns which were illuminated by the present survey are the following:

1. Acute dissatisfaction exists concerning Congress' role in foreign policy making. This view is clearly discernible among all factions and groupings on Capitol Hill.
2. Considerable dissatisfaction is also expressed concerning the Executive policy making role, and even the substance of that policy. Here there is a key partisan difference: at a time when the Republican party controls the White House, the Democrats exhibit significantly greater restiveness over foreign policy than do Members of the President's party.
3. Few inter-House differences in perceptions or attitudes seem to exist. These few differences reflect conditions peculiar to one or the other of the bodies.
4. Democrats are, in general, more supportive of reform proposals than are Republicans—especially reforms designed to increase Executive Branch accountability.
5. Low- and middle-seniority legislators tend to be more supportive of changes than are senior Members.
6. By the same token, non-leaders are somewhat more ready to support reform proposals than are leaders.
7. In general, however, variations among groupings of legislators—party, seniority, leadership, and the two Houses—are not dramatic. Attitudes toward these matters seem to be widely shared on Capitol Hill.

Measuring Congressional attitudes is like looking backward from a moving train. What one sees is already passed. Much has happened in the short time since this survey was conducted. A newly elected Congress has convened. Controversial and to some extent divisive foreign policy issues have been debated and acted upon. The seniority system and other Congressional institutional elements have undergone change. The Congress that will

1777

receive this report and the recommendations of the Commission is a somewhat different one than that which created the Commission and was the basis for this survey.

Yet, what is past is prologue, and it seems likely that the views on Congress and foreign policy revealed by this survey have not changed nearly as sharply as continuing shifts of opinion on specific foreign policy issues might suggest. The emphasis of the survey, like that of the Commission's mandate, is largely organizational. While views on issues and organization undoubtedly interact, most evidence suggests they are less than mirror images. It would seem logical to suppose that attitudes on organization and procedures reflect satisfaction and dissatisfaction with the influence over time of organizational patterns and procedures upon numerous policy questions. Thus, attitudes toward organization would seem likely to evolve and change more gradually than attitudes toward policy.

Any changes in the attitude patterns on organization revealed by this study are likely to be a result more of changes in the composition of the Congress than of the impact of recent events and policy issues. With respect to the Members new to Congress since the completion of interviews in this survey, the limited evidence to date suggests that they are certainly less committed to existing institutions and procedures than their predecessors.

There are other reasons to believe that this survey, if anything, understates support for and likelihood of specific changes than reality would warrant. "Cue-taking" is widespread among legislators. But the flow of information among legislators is often impeded. Members often do not have an accurate picture of their colleagues' views on many of these matters, as evidenced by the fact that many respondents were more reluctant to ascribe support to others than to express support themselves. Consequently, the mere act of publicizing the amount of support commanded by a specific proposal may focus other legislators' attention upon the issue, altering support and opposition in the process.

Shifts in the size of groupings on Capitol Hill may also alter the prospects for change. Enlargement of groupings supportive of certain types of reform—as occurred when the 1974 elections increased the number of Democrats and low-seniority Members—has already intensified the movement toward a more aggressive Congressional stance toward the Executive in foreign policy. Other shifts could have analogous impacts upon the future course of structural innovation on Capitol Hill. Should the Democrats capture the White House at some future date, for example, the enthusiasm of Capitol Hill Democrats for limitations on Executive Branch operations would undoubtedly dampen. But given the increasing impact of foreign policy upon the domestic quality of life to which Congress is so sensitive, and the breadth and depth in Congress of general support for change, it seems unlikely that any President—of either party—will be able to forestall a more active, varied, and influential role for Congress in foreign policy.

What seems more likely is that reasoned suggestions by authoritative groups on means for effecting a greater Congressional foreign policy role are likely to have particular impact. By focusing its recommendations for Congressional change upon the areas of consensus within Congress revealed by this survey, the Commission on the Organization of the Government for the Conduct of Foreign Policy can hope to have just an impact.

1778

Study Purposes and Methods

The survey of Congress was undertaken in response to three needs defined by the staff and concurred in by the Commission: (1) the need to inform Members of Congress of the work, concerns, and goals of the Commission, (2) the need to provide Members an opportunity to make their views known to the Commission on issues within the Commission's mandate, and (3) the need to compare and measure the views of Members on certain key matters to provide the Commission with the most precise picture possible of the mood and dimensions of Congressional attitudes on Congress and foreign policy.

The staff consulted with several Congressional and public opinion survey experts, both academic and non-academic, in an effort to determine whether a survey of Congress would meet the needs of the Commission, and, if so, what kind would be most appropriate.

The consultants generally reinforced the staff's view that, while Congress is difficult to survey due to heavy demands on Members' time, some kind of survey was probably the only way to achieve the Commission's need for reliable information about legislators' thinking. Consultants differed sharply, however, on the question of the most appropriate kind of survey and how it should be implemented. At least one consultant, for example, tended to feel that a richer understanding of Congressional attitudes could be attained by an informal survey than by a formal one, and that the needs of the Commission might be satisfied simply by a letter to all Members advising them of the concerns of the Commission and inviting any suggestions, thoughts, or ideas they might wish to convey. Other consultants argued for administering a carefully constructed and tested questionnaire to a scientifically drawn sample of Members of Congress. Some consultants argued for administration of interviews by the Commission staff, making use of the staff's detailed familiarity with foreign policy issues, while others argued for the interviews to be conducted by professional survey interviewers.

After weighing the considerations raised by the consultants, the staff settled on a plan generally leaning toward the more formal, systematic survey, but incorporating also some aspects of a less formal approach. The staff plan consisted of three elements: (1) a survey by personal interview of a scientifically drawn (stratified random) sample of the Congress, (2) briefer, less formal personal interviews of Congressional leaders in the foreign policy field who did not fall within the scientifically drawn sample, and (3) a mail questionnaire survey of all other Members of Congress. Both live interview questionnaires and the mail questionnaire would consist of a combination of general questions which would allow maximum opportunity and latitude for Members to "speak their minds," followed by more highly structured questions which would assure precise comparison and quantification of Members' views on certain central issues.

For purposes of administering the scientific survey interviews, the Commission staff approached two leading non-profit survey research organizations—the National Opinion Research Center at the University of Chicago, and the Survey Research Center at the University of Michigan. While both organizations expressed interest in undertaking the project, both their respective field teams were fully occupied with other interview responsibilities during the time within which the staff hoped to complete the Commission survey. The Survey Research Center, however, indicated that its professional staff would be available to (1) work with the Commission staff in developing the interview schedule, (2) help "pre-test" the interview schedule, (3) revise the interview schedule on the basis of the "pre-tests," (4) train the Commission staff on sampling and other problems in the implementation of the survey. An agreement was entered into with the Survey Research Center along these lines.

A preliminary interview schedule drafted by the Commission staff was edited and revised by the SRC Director of Field Operations. Four SRC professional interviewers were assigned to conduct "pre-test" interviews in Washington with former Members of Congress. Seven such pre-test interviews were conducted, with Commission staff sitting in as observers. On the basis of that experience, the interview schedule was further revised and finalized. A two-day training workshop in interview techniques was held for Commission staff members designated to conduct "sample" and

"leadership" interviews, and the first formal sample interview was conducted on November 4, 1973.

The Commission staff obtained the assistance and services of the Social and Economic Statistics Administration of the Bureau of the Census in drawing the sample. Based upon the Commission's resources, planned analysis of the data, and need for reliability, the Social and Economic Statistics Administration's professional statisticians recommended a minimum sample size of 100. On that basis, it was determined that one of every five Members of Congress should be included in the sample. The sample was drawn under the direction of Census Bureau statisticians employing generally accepted methods to assure statistically random selection and representativeness of the sample with respect to party, geographic region, and foreign policy leadership.[1] No specific control was imposed for seniority; an analysis of the sample after it was drawn, however, indicated that it was adequately representative of the whole House and Senate with respect to this and other factors not specifically "controlled." [2]

As finally drawn, the sample included 106 Members—20 Senators (6 foreign policy leaders, and 14 non-leaders) and 86 Members of the House (11 foreign policy leaders, and 75 non-leaders). One hundred and five of the 106 Members in the sample (99.1%) were interviewed between November, 1973, and July, 1974.[3] In 19 cases (18.1% of the completed interviews), it was necessary to substitute for Members in the sample who declined or were unable to grant an interview. In every instance, however, the substitute respondent was from the same geographic region, party, and leadership category as the original respondent, thus preserving the representativeness of the total sample.[4] No substitution was possible in only one case, accounting for the one uncompleted interview.

Sample respondents were first contacted by letter —a letter from the Commission Chairman informing them of the purpose of the survey and indicating that a staff interviewer would contact their offices for an interview appointment.[5] These letters were followed by personal calls and visits to the respondents' offices by Commission staff interviewers. Most interviews were obtained with no more than three or four contacts after the initial letter. Some interviews, however, required as many as a dozen or more call backs. No uniform rule was followed with respect to when to give up on a respondent and select a substitute. Each case was considered on its own merits by the interviewer and project director.

Every effort was made, however, to be sure the Member himself—not just his staff—was aware of the interview request and had personally made or concurred in a decision to refuse or discourage the interview. Lacking such evidence, efforts to obtain the interview persisted until the interviewer and project director agreed that every reasonable means of obtaining the interview had been tried without success. In several cases, efforts to obtain interviews stretched over several months—particularly where respondents were involved in major committee or legislative efforts which made an immediate interview difficult.

For purposes already described, the interview included both highly structured and rather open-ended questions. The more general and open-ended questions were placed at the beginning of the interview in order to avoid "putting ideas" into Members' minds or suggesting points of view they might not otherwise have in mind. In view of the "conventional wisdom" that many Members of Congress have little interest in foreign policy matters, it was important that the interview gauge accurately the extent of the Members' interest in the subject, not to mention the level of his or her information.

Another reason for placing open-ended questions at the outset of the interview is to encourage respondents to talk expansively about the subject. Closed-ended questions are designed to discourage ruminative or discursive responses, and hence, are properly placed toward the end of the session. A list of 22 specific proposals for changes in Congress and Congressional-Executive relations with respect to foreign policy (later reduced to 16 to

[1]The basis for designation of Senate and House foreign policy leaders is described in Annex B.

[2]For a detailed comparison of the characteristics of the sample with those of the Senate, House, and Congress as a whole, see Annex C.

[3]Inevitably, political, economic, and social events and changes may influence interview results, particularly interviews of Members of Congress who are sensitive to such changes. The Watergate scandal and the impeachment of the President was the major series of events that seemed to preoccupy Congress during the period in which the interviews were conducted. There is no accepted way to estimate the impact of this or other events upon the interviews. However, the number of interviews completed each month from November, 1973 to July, 1974 is provided in Annex D.

[4]Some survey analysts contend that uncompleted interviews may systematically exclude certain attitudes from survey results which cannot be accounted for by substitutions. As a practical matter, there is no way to resolve this problem, and the Commission staff felt it was preferable to make substitutions where absolutely necessary than to rely on a reduced number of completed interviews. Furthermore, most interview refusals were based upon scheduling and time-constraint problems which would appear to be unrelated to any particular attitudes of Members involved. It seems unlikely, therefore, that any attitudinal bias has been introduced by the interview refusals and substitutions. Annex E contains a summary of reasons for interview refusals and a comparison of voting and debate participation of original and substitute respondents on four key foreign policy proposals.

[5]Sample of initial letters to respondents appears as Annex F.

1750

shorten the interview) was formulated.[6]

The format used for these specific questions was patterned after questions employed by Davidson, Kovenock and O'Leary in their study of Congressional reform.[7] Professor Roger Davidson, then on the staff of the House Select Committee on Committees, was consulted on the problems and advantages of this type of question. The specific proposals were selected from an exhaustive list compiled by the Commission staff from recent publications on Congressional reorganization by scholars, journalists, and legislators. Those selected tended, in the view of the staff, to have the greatest relevance to foreign policy decision outcomes.

The specific questions were intended not only to obtain respondents' attitudes and assessments of each of the reforms mentioned, but also to "trigger" any related or original ideas for reform Members might consider more appropriate, and to learn the criteria on which they tend to judge organizational changes. As warned by consultants, many respondents took exception to particular elements of these proposals. Under such circumstances, interviewers were instructed to urge the respondent to assess the proposal "in principle," and simply record any detailed reservation or comment. Thus, the tabulated responses to these questions reflect Members' views of the general idea contained in each proposal, rather than endorsement of any particular detail.

The average length of the interviews was about 65 minutes, with the longest lasting about 180 minutes, and the shortest about 20 minutes. Interviewers informed potential respondents and their staffs that the interview would take about 45 minutes, and tried not to begin an interview without some assurance that sufficient time would be available to complete it. Nevertheless, interviews were often interrupted, and a few were left temporarily uncompleted. In several cases, respondents agreed to complete interrupted interviews in writing, and did so. In one case, an uncompleted interview was finished by telephone. A second visit was paid to several respondents to finish uncompleted interviews. Only one interview remained incomplete, and was finally recorded as a partial interview.

Most of the interviews—by far the majority—took place in Members' offices. A few took place off the floor of the House and Senate, and in a variety of other places. The settings in Members' offices during interviews ranged from cloistered to frenetic. In most cases, the atmosphere was sufficient to allow respondents and interviewers to concentrate upon the interview with a minimum of distractions. No formal record of interview interruptions was maintained by the interviewers.

All interviews were tape-recorded (no respondent refused to be recorded or, to our knowledge, refused to grant an interview because recording was requested) and the recordings transcribed. To protect the anonymity promised all respondents, tapes and transcripts were identified only by number. Responses to structured questions (i.e., those in which the respondent was asked to choose one of 3 or 4 suggested responses) were tabulated and computer-analyzed. Comments and general responses were systematically analyzed and coded for maximum comparability and quantification using coding techniques generally prescribed and accepted by statisticians and social scientists.

A second coding of all categorical interview responses was performed after completion of the interviews. This procedure was recommended by consultants from the Institute for Social Research as a means of correcting inadvertent interviewer errors and evaluating responses which were unclear and likely to reflect interviewer interpretation and inference. This process produced a 4.6 percent change in the data, and about a 3.8 percent shrinkage of the data base due to the throwing out of data which were judged to be too tenuous to justify inclusion. The distribution of this data shrinkage for each question asked is reported in Appendix K. As this table shows, data changes and shrinkages were rather evenly distributed throughout the interview schedule, the highest concentration being 8.5 percent change and 11 percent data loss on question 13b. Of the 44 items asked of all respondents, 20 endured net data revisions (changes and deletions) of less than 6 percent.

A researcher unassociated with the survey project during the interview phase was assigned the recoding task. Responses proposed to be changed or dropped on the basis of the recoder's reading of the transcript were reviewed by the interviewer. In cases of disagreement between the interviewer and recoder, the project director adjudicated. Recoding was done completely on the basis of responses appearing in the transcript at the point at which each question was posed. Detailed procedures employed in the recoding process and total results are described in Annex G.

It is difficult to indicate precisely the validity or reliability of any survey, no matter how "scientific" the procedures have been. Inevitably, judgments of researchers are to some extent reflected in survey results, at least in interpreting the meaning of the data. No matter how much care is taken, the data themselves are subject to some error. The Commission staff can say with certainty, however, that the procedures used in all stages of this

[6]Revised questionnaire appears as Annex F. See questions 6 through 21.

[7]*Congress in Crisis: Politics and Congressional Reform*, (Belmont, California, Wadsworth Publishing Co., 1966).

-178-

survey conform with the most rigorous and reliable methods available. Thus, the staff feels confident that the reliability of this survey is equal to any yet conducted of the Congress. In several respects, the "scientific" standards achieved are higher than those achieved in other studies generally regarded as having high reliability. The interview completion rate of 99.1 percent, for example, is higher than any other similar study that has come to the staff's attention.

The survey findings presented below are based primarily upon data generated from the interviews of the stratified random sample of House and Senate Members. Specific figures should be read bearing in mind the limits of reliability due to possible sampling error set forth by the Bureau of the Census.[8] In general, possible sampling error is ±4% for Congress as a whole, ±9% for the Senate, and ±4.5% for the House. Where more general results are reported, this possible error has been taken into account and the finding, in the judgment of the researchers, is justified despite the range of possible error.

Results from informal interviews of foreign policy leaders (43 completed) not included in the sample, and questionnaires sent to all other Members of Congress (33 completed and returned) were used to supplement the sample findings. Any findings based substantially on such supplementary data are so identified. Findings not so identified may be assumed to be supported by sample data alone.

[8]See Annex I.

In addition to the individuals acknowledged in the Preface, the following Congressional and attitude survey experts consulted with the Commission staff on various aspects of this project:

PROFESSOR LEWIS A. DEXTER, University of Maryland, Baltimore Campus.

VICTOR KUGAJEVSKY
and

EDWARD F. R. HEARLE, BOOZ, Allen & Hamilton, Inc., Washington, D. C.

LLOYD A. FREE, PRESIDENT, International Associates, Washington, D. C.

As with all consultants employed in this survey, these experts bear no responsibility for the results and conclusions of the study.

1782

Selection of Foreign Policy Leaders for Survey Sample

Thirty Senators (18 Democrats and 12 Republicans) and 58 Members of the House (33 Democrats and 25 Republicans) were selected as "foreign policy leaders." Of those, 6 Senators and 11 Members of the House were selected at random for inclusion in the survey sample.

Designation of foreign policy leaders was done by two members of the Commission staff—one a former Senator and the other a former Administrative Assistant to a Member of the House Foreign Affairs Committee—based upon their experience and judgments of formal and informal foreign policy influence in the House and Senate. Except where differences in organization and jurisdiction between the two bodies of the Congress made it impossible, Members holding corresponding roles and responsibilities in each House were included in the list of foreign policy leaders. Top party leaders and Chairmen and Ranking Minority Members of the Foreign Relations and Foreign Affairs Committees and their Subcommittees constituted the core of the leadership list. Subcommittee Chairmen and Ranking Minority Members with particular foreign policy related responsibilities of the Armed Services Committees, Ways and Means and Finance Committees, Agriculture Committees, Banking Committees, and Joint Economic and Atomic Energy Committees were also included among those designated foreign policy leaders.

The list of House foreign policy leaders is nearly twice as long as the Senate foreign policy leaders due to the House rule limiting Members to one Subcommittee chairmanship in contrast to the Senate, where several individual Senators occupy more than one foreign policy leadership role.

1782

Comparative Tables

TABLE C-1.—COMPARISON OF SAMPLE WITH WHOLE SENATE AND HOUSE ON SEVERAL NON-CONTROLLED FACTORS

HOUSE	*Whole House*	*Sample*
Seniority (average years service as of end of 93rd Congress)	9.9 years	9.6 years
Presidential Support (93rd Congress, 1st Session)*	48%	47%
Party Unity (93rd Congress, 1st Session)**	42%	43%

SENATE	*Whole Senate*	*Sample*
Seniority (average years service as of end of 93rd Congress)	10.9 years	11.1 years
Presidential Support (93rd Congress, 1st Session)*	52%	50%
Party Unity (93rd Congress, 1st Session)**	40%	39%

*Percentage of 185 Votes in the Senate (125 in the House) in 1973 on which Membership Voted in Agreement with the President's Position.

**Percentage of 237 Votes in the Senate (226 in the House) on which Membership Voted in Agreement With a Majority of their Respective Party.

TABLE C-2.—COMPARATIVE ANALYSIS OF CHARACTERISTICS AND VOTING BEHAVIOR OF ORIGINAL 43 RESPONDENTS AND FINAL 62 RESPONDENTS

		HOUSE	*SENATE*	*HOUSE/SENATE*
Leadership Characteristics (Leader/Non-leader)				
Original 43 Respondents	Leaders	3 (8.8%)	3 (33.3%)	6 (13.9%)
	Non-leaders	31 (91.1%)	6 (66.6%)	37 (86%)
Final 62 Respondents	Leaders	9 (17.64%)	4 (36.4%)	13 (20.96%)
	Non-leaders	42 (82.35%)	7 (63.63%)	49 (79.03%)
Party Characteristics (Republican/Democrat)				
Original 43 Respondents	Dems.	15 (44.1%)	7 (77.7%)	22 (51.16%)
	Reps.	19 (55.9%)	2 (22.2%)	21 (48.8%)
Final 62 Respondents	Dems.	32 (62.7%)	5 (45.45%)	37 (59.67%)
	Reps.	19 (37.2%)	6 (54.5%)	25 (40.32%)

VOTING BEHAVIOR				
Senate	*Key Vote #1**	*Key Vote #2*	*Key Vote #3*	*Key Vote #4*
Original 43 Respondents (11 Senators)	Yea 33.3% Nay 22.2% Not Voting 44.5%	Yea 33.3% Nay 44.4% Not Voting 22.3%	Yea 88.8% Nay 11.1%	NA

1784

Final 62 Respondents	Yea 54.5% Nay 45%	Yea 63.3% Nay 36.3%	Yea 45.4% Nay 54.5%	NA
House				
Original 43 Respondents (34 House Members)	Yea 56.8% Nay 34.7% Not Voting 8.5%	Yea 41.4% Nay 44.1% Not Voting 14.5%	Yea 67.6% Nay 29.4% Not Voting 3%	Yea 52.9% Nay 32.3% Not Voting 14.8%
Final 62 Respondents	Yea 58.8% Nay 37.25% Not Voting 4%	Yea 49.6% Nay 33.3% Not Voting 17%	Yea 67% Nay 31.3% Not Voting 2%	NA

• Key vote explanation follows; see Table E-3, p. 149.

1785

Sample Interviews Completed by Month

Month	*Sample Interviews Completed*
November 1973	35
December 1973	28
January 1974	11
February 1974	2
March 1974	15
April 1974	3
May 1974	4
June 1974	3
July 1974	4
Total	105

1786

Data Amplifying Interview Respondent Behavior

TABLE E-1.—SUMMARY PROFILE OF ORIGINAL SAMPLE RESPONDENTS NOT INTERVIEWED

House	*Party*	*Leader/Non-leader*	*Region*	*Stated Reason for Refusing Interview*
House	Dem.	Leader		Too busy; could not fit into schedule
House	Rep.	Non-leader		Retiring from Congress
House	Dem.	Non-leader		Running for Senate; could not fit into schedule; dislikes interviews generally
House	Dem.	Non-leader		Too busy; Chairman of very active Subcommittee
House	Dem.	Non-leader		No stated reason; unwilling to grant interview
House	Dem.	Non-leader		Too busy; generally dislikes interviews
House	Rep.	Non-leader		Retiring from Congress
House	Rep.	Non-leader		Freshman Member; said he was not knowledgeable about foreign policy; Member of Judiciary Committee
House	Dem.	Non-leader		Too busy; personal problems caused substantial absence from House
House	Dem.	Non-leader		Not knowledgeable about foreign policy
House	Rep.	Non-leader		Too busy; did not wish to grant interview
House	Dem.	Non-leader		Too busy; Member Judiciary Committee
House	Dem.	Non-leader		Too busy; Freshman Member; Member Judiciary Committee
House	Dem.	Non-leader		Too busy; Freshman Member; Member Judiciary Committee
House	Dem.	Non-leader		No stated reason; staff would not OK interview or provide access to Member
House	Dem.	Non-leader		Wanted staff member to be interviewed; not knowledgeable about foreign policy
House	Dem.	Non-leader		Various stated reasons; did not wish to be interviewed

TABLE E-2.—COMPARISION OF VOTES. ORIGINAL-SUBSTITUTES

Interview Number		*Key Vote #1*	*Key Vote #2*	*Key Vote #3*	*Key Vote #4*
	Original	Y	Y	Y	N
12	Substitute	Y	Y	Y	N
	Original	N	N	Y	N
58	Substitute	N	Y	Y	Y
	Original	N	N	N	Y
59	Substitute	Y	Y	Y	Y
	Original	Y	Y	Y	N
60	Substitute	Y	N	?	N
	Original	N	N	Y	?
61	Substitute	N	Y	N	Y
	Original	Y	Y	Y	V
62	Substitute	Y	Y	Y	X
	Original	Y	N	Y	Y
76	Substitute	Y	N	Y	Y
	Original	Y	N	N	?
82	Substitute	N	?	Y	Y
	Original	Y	Y	Y	N
85	Substitute	Y	N	Y	N

1797

Interview Number		Key Vote #1	Key Vote #2	Key Vote #3	Key Vote #4
	Original	Y	N	Y	Y
98	Substitute	Y	Y	Y	Y
	Original	Y	V	Y	Y
121	Substitute	Y	Y	Y	Y
	Original	N	Y	Y	Y
122	Substitute	?	N	N	Y
	Original	N	Y	Y	Y
124	Substitute	N	N	Y	N
	Original	Y	Y	Y	N
125	Substitute	Y	Y	Y	N
	Original	Y	Y	Y	N
126	Substitute	Y	Y	Y	Y
	Original	Y	N	N	N
128	Substitute	N	N	N	V
	Original	Y	N	Y	N
131	Substitute	N	N	N	Y

Code
Y = Yes
N = No
? = Not Recorded
X = Paired "Against"
V = Paired "For"

CHART E-1.—ANALYSIS OF DEBATE PARTICIPATION OF 17 ORIGINAL AND SUBSTITUTE HOUSE RESPONDENTS ON FOUR KEY 1973 FOREIGN POLICY BILLS

Original Respondents				*Substitute Respondents*				
Bill #1	*Bill #2*	*Bill #3*	*Bill #4*	*Bill #1*	*Bill #2*	*Bill #3*	*Bill #4*	*Respondent Number*
	x	x						12
								58
		x						59
						x	x	60
x	A	x						61
							x	62
								76
		x	x				x	82
	A							85
								96
			x		x			121
					A			122
	x			x		x		124
x	x	x	x					125
								126
								128
				x	A		x	131

x = participated in debate
A = offered amendment

178

Table E-3.—SUMMARY/DESCRIPTION OF 1973 KEY VOTES—FOREIGN POLICY
(Based on Congressional Quarterly Key Vote Selection)

Senate

#1 HR 7447. *Second Supplemental Appropriations, Fiscal 1973.* Submission to the Senate for a decision on the question: Was the pending committee amendment, to bar any funds in the bill or in any previous appropriations bill from being used to support combat activities in or over Cambodia and Laos, germane to the bill? Agreed to 55–21: R 18–17; D 37–4 (ND 30–1; SD 7–3), May 29, 1973. The President did not take a position on the question.

#2-S 1443. *Foreign Military Aid Authorization.* Scott (R Pa.) amendment to delete language in the bill requiring the phasing out of U. S. military grant assistance programs by June 30, 1977. Adopted 48–44: R 37–4; D 11–40 (ND 4–32; SD 7–8), June 26, 1976) A "yea" was a vote supporting the President's position.

#3 HR 9286. *Defense Procurement.* Mansfield (D Mont.) Substitute amendment, to a Cranston (D Calif.) amendment, to reduce by 40 per cent the land-based U. S. troops stationed overseas by June 30, 1976. Adopted 49–46: R 7–34; D 42–12 (ND 34–6; SD 8–6), September 26, 1973. A "nay" was a vote supporting the President's position. (The Cranston amendment, as modified by the Mansfield amendment, was subsequently rejected 44–51.)

House

#1 HR 7447. *Second Supplemental Appropriations, Fiscal 1973.* Addabbo (D N.Y.) amendment to delete language in the bill authorizing the Defense Department to transfer funds from other defense programs for use in Southeast Asia, including the continued U. S. bombing of Cambodia, and to cover increased subsistence costs and the devaluation of the dollar. Adopted by recorded teller vote 219–288: R35–143; D184–45 (ND145–7; SD 39–38), May 10, 1973. A "nay" was a vote supporting the President's position.

#2 HR 9360. *Foreign Military Economic Aid.* Passage of the bill to authorize, for fiscal 1974: $978.9 million for foreign economic assistance, $632 million for Indochina post war reconstruction (except North Vietnam) and $1.15 billion for foreign military assistance and credit sales; and to authorize, for fiscal 1975: $821 million for foreign economic assistance. Passed 188–183: R 69–89; D 119–94 (ND 100–42; SD 19–52), July 26, 1973. The President did not take a position on the bill.

#3 H J Res 542. *War Powers.* Passage over President Nixon's October 24 veto of the bill to establish a 60–day limit on the President's power to commit U. S. troops abroad, unless Congress declared war or specifically authorized the action or was unable to meet because of an armed attack on the United States, and to permit Congress to end such a commitment at any time by passage of a concurrent resolution, which would have statutory authority without a presidential signature. President's veto overridden 284–135: R 86–103; D198–32 (ND143–9; SD55–23), Nov. 7, 1973. A two thirds majority vote (280 in this case) is required to override a presidential veto. A "nay" was a vote supporting the President's position.

#4 HR 10710. *Trade Reform.* Adoption of the rule (H Res 657) providing for House floor consideration of the bill to grant the President far-ranging powers to negotiate agreements adjusting trade barriers with other countries. The rule prohibited consideration of amendments not offered by the Ways and Means Committee except: (1) an amendment by Rep. Vanik (D Ohio) to forbid extension of credits of guarantees to any Communist nation if the President found that it denied its citizens the right to emigrate or imposed more than nominal fees or taxes on persons who wished to emigrate; (2) an amendment to delete the section of the bill dealing with trade with Communist nations and (3) an amendment to delete the section providing trade preferences to developing nations. Rule adopted 230–147: R 136–24; D 94–123 (ND 39–103; SD55–20), Dec. 10, 1973. A "yea" was a vote supporting the President's position.

- 174

Sample Interview Schedule

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY
2025 M STREET, N.W.
WASHINGTON, D.C. 20506

The Commission on the Conduct of Foreign Policy is about to survey the views of Members of Congress with regard to the role of Congress in the making of foreign policy. The Commission, as you may know, is charged with reviewing the organization of the Federal Government with respect to foreign policy (mandate attached). The role of Congress, of course, is an essential part of such a review, and your colleagues, Senators Mansfield and Pearson, and Congressmen Mailliard and Zablocki, are Members of the Commission.

With this in mind, we would like to arrange a personal interview with you. One of the trained interviewers on the Commission's staff will contact your office soon to arrange an interview at your convenience.

Since we are interested in the opinions of the Congress as a whole, as well as those of individual Members, it is important we talk to a good cross-section of the Congress—both Members who are deeply involved in foreign affairs, and those less so. Whether you regard yourself as an expert in foreign affairs or not, we are interested in your opinions, and hope you will cooperate by agreeing to be interviewed. The information you provide will be kept in strict confidence; your replies and those of all other respondents will be tabulated in statistical form, and no individual will ever be identified.

We will provide a report of the results of this survey when our work is complete. Should you have any particular questions about the Commission or this study, Francis O. Wilcox, Executive Staff Director of the Commission, or I would be glad to talk with you about it (we can be reached at 202-254-9850). In any event, your office will be hearing from our interviewer shortly, and on behalf of the Commission I want to thank you in advance for your assistance which we greatly appreciate.

Cordially,

Robert Murphy
Chairman

- 1790

Fall, 1973

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT
FOR THE CONDUCT OF FOREIGN POLICY
COVER SHEET

1. Interviewer's Name

2. Your Interview No. _____

3. Date _____

4. Length of Interview _____
(Minutes)

5. Respondent's Name: _____

6. Respondent's Address: _____
(Number) (Street) (City)

7. Respondent's Position: _____

8. Respondent's Telephone Number: _____
(Area Code) (Number)

9. Appointment: _____
(Day) (Date) (Time)

10. Call Record:

Call Number	1	2	3	4	5	6	More (specify)
Hour of the Day (plus AM or PM)							
Date							
Day of Week							
Results							
Interviewer's Initials							

1791

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT
FOR THE CONDUCT OF FOREIGN POLICY
FACE SHEET

1. Interviewer's Name

2. Your Interview No. _____

3. Date _____

4. Length of Interview _____
(Minutes)

INTRODUCTION:

As you may know, the Commission on Foreign Policy was created by Congress. The Chairman is Robert Murphy and your colleagues, Senators Mansfield and Pearson and Congressmen Mailliard and Zablocki, are among the Members of the Commission. It is charged with studying both the Executive Branch and the Congress itself with regard to possible ways of improving the organization of the government for the conduct of foreign policy. (OFFER COPY OF MANDATE AND LIST OF COMMISSIONERS, IF NECESSARY.) With that in mind, the Commission is interested in the views of Members of Congress—both those who are very familiar with foreign affairs, and those less so. So the purpose of this interview is to learn your views, and I have some prepared questions to ask you. The information you give us will be kept in complete confidence within the Commission and staff. Some of it will be tabulated, and any public use of it will be in tabulated form with no person identified.

-1792

TIME START_____

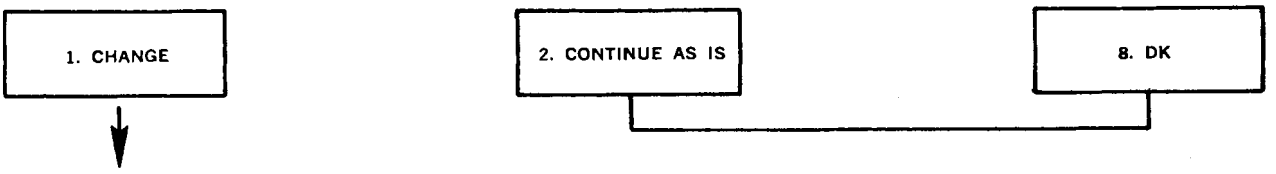
1. First of all, would you tell me, briefly, what roles you feel Congress and the Executive Branch should play with regard to making our foreign policy.

2. Emphasizing, now, the content of our foreign policy rather than the institutions of government involved in making it, how do you feel overall about the *direction* American foreign policy has taken during, say, the last two administrations?

1793

3a. Now I would like to read a list of general activities involved in the making and conduct of our foreign policy—both by Congress and the Executive Branch. For each one, I'd like you to tell me whether you feel it *should continue* as it is, or whether you feel it should change either in emphasis or organization.

The first one is, the activities of the *leadership within Congress* on foreign policy matters. Should they continue as they are or should they change?



GO TO 3b

3b. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

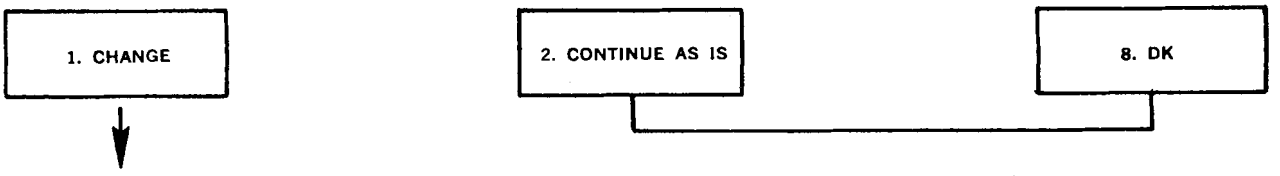
_____

_____

_____

_____

3c. How about the activities of the *leadership within the Executive Branch* on foreign policy matters. (Should they continue as they are or should they change?)



GO TO 3d

3d. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

_____

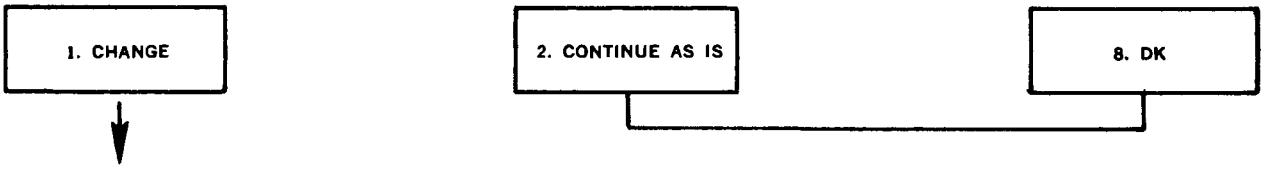
_____

_____

_____

1794

3e. What about *consultation and liaison* between the Executive Branch and Congress on foreign policy? (Should it continue as it is or should it change?)



GO TO 3f

3f. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

_____

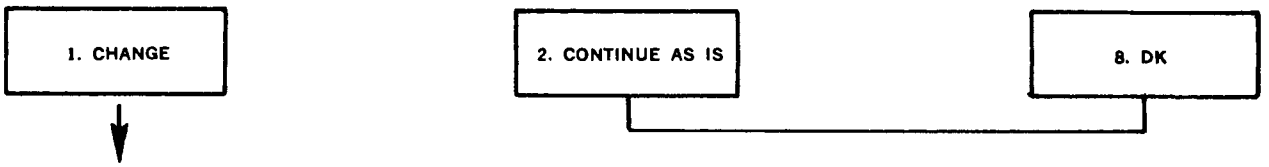
_____

_____

_____

_____

3g. Congressional efforts to *coordinate policies and programs* in foreign affairs. (Should these continue as they are or should they change?)



GO TO 3h

3h. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

_____

_____

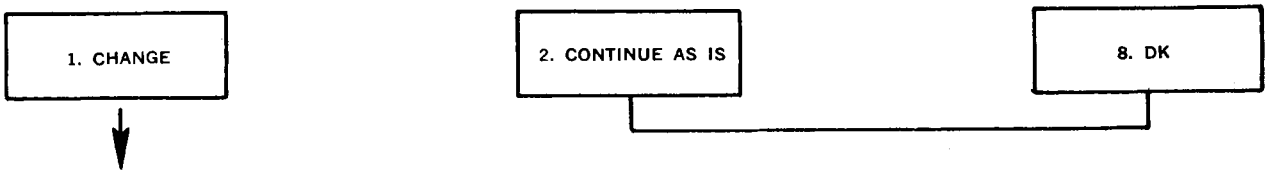
_____

_____

_____

1795

3i. *Congressional review and oversight* of our foreign programs and activities. (Should that continue as it is or do you feel it should change?)



GO TO 3j

3j. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

_____

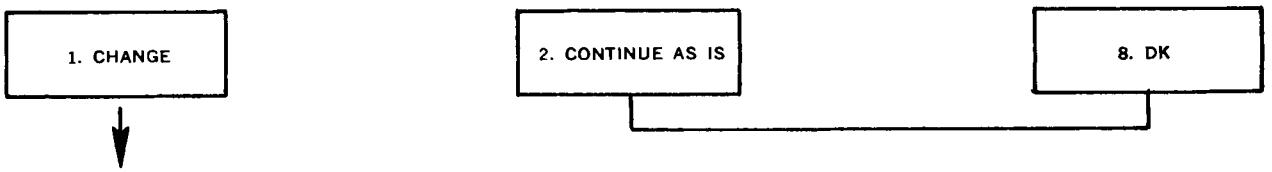
_____

_____

_____

_____

3k. What about *review and oversight* of our foreign programs and activities *by the Executive Branch itself?* (Should this continue as it is, or should it change?)



GO TO 3l

3l. (IF NECESSARY, ASK "Would you elaborate on that?")

_____

_____

_____

_____

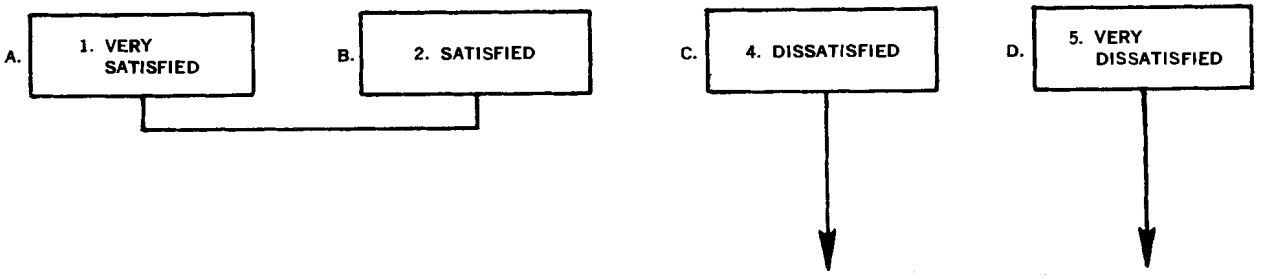
_____

_____

1796

4. (CARD 1) Now I'd like to talk for a moment about some of the ways Congress is organized, *not limited to foreign policy,* but in general. For each one will you tell me whether you are very satisfied, satisfied, dissatisfied or very dissatisfied. Just tell me the letter of the response category.

The way committee chairmen are selected. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied with the way Committee Chairmen are selected?)

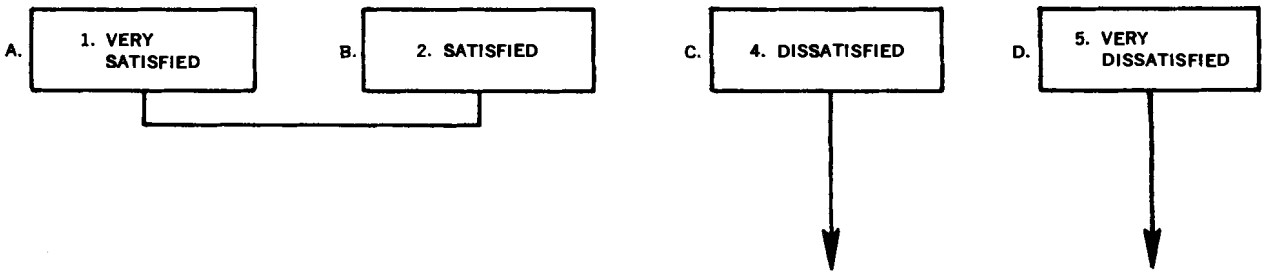


TURN TO P. 6, 4b

4a. What changes would you suggest?

1797

4b. Committee jurisdictions and the way they are defined in Congress. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied with the way Committee jurisdictions are defined in Congress?)

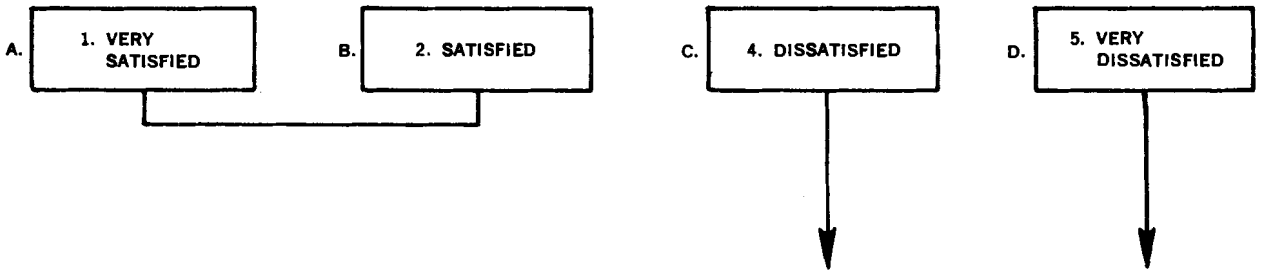


TURN TO P. 7, 4d

4c. What changes would you suggest?

1798

4d. Referring again to the basic organization of Congress in general and not limited to foreign policy, what about the *extent to which power and authority is dispersed and divided* in Congress? (Are you very satisfied, satisfied, dissatisfied or very dissatisfied about the extent to which power and authority is dispersed and divided in Congress?)

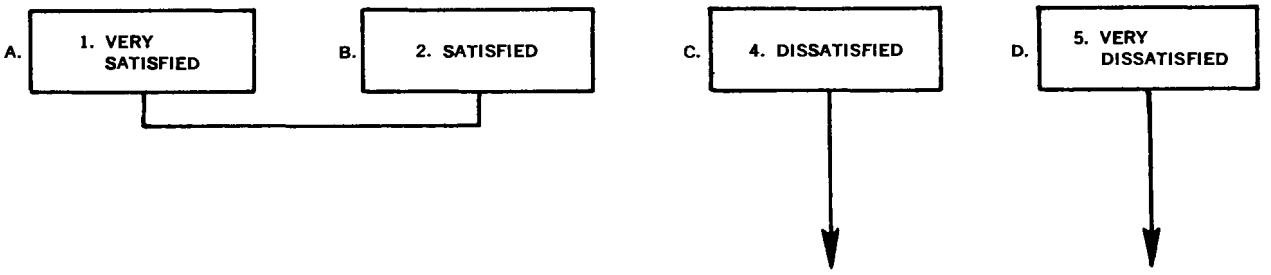


TURN TO P. 8, 4f

4e. What changes would you suggest?

1799

4f. The way in which Congress coordinates and controls total revenues and expenditures. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied about the way in which Congress coordinates and controls total revenues and expenditures?)



TURN TO P. 9, 4h

4g. What changes would you suggest?

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

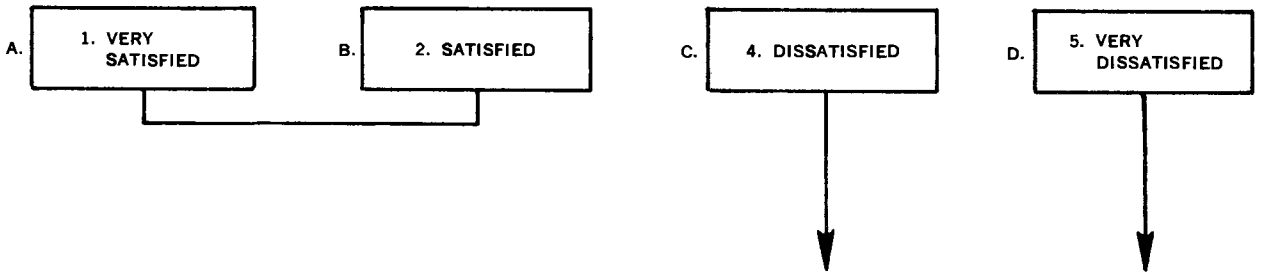
_____

_____

_____

1800

4h. Still on Congressional organization generally, and not limiting this to foreign policy, what about the way Congress obtains and handles information. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied about the way Congress obtains and handles information?)

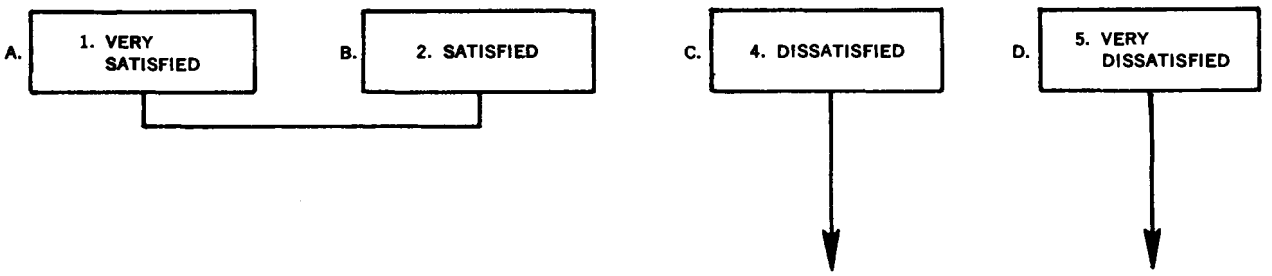


TURN TO P. 10, 4j

4i. What changes would you suggest?

1800A

4j. The staff support and assistance generally available to the Congress to do its work. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied with the staff support and assistance generally available to the Congress to do its work?)



TURN TO P. 11, 5

4k. What changes would you suggest?

1801

5. *Going back, now, specifically to foreign policy,* in general how do you feel about the *role Congress plays in the involvement of American forces in hostilities abroad?* (IF NECESSARY, ASK "Why do you feel that way? OR "What changes would you suggest?")

(CARD 2) This next set of questions consists of brief descriptions of some proposals that have been made for changing the role of Congress in the area of foreign affairs. These proposals were picked more or less at random from recent commentary about Congress and foreign policy. For each proposal will you indicate whether you would strongly support it, support it, oppose it, or strongly oppose it. If you will turn to the yellow card, you can just tell me the *letter* of the response category on the *top* of that card. For each proposal I would also like to know what you think the *chances are* such a proposal will be adopted within the next few years. Do you think it is extremely likely, likely, that there is a 50–50 chance, that it is unlikely or extremely unlikely that it will be adopted. You can just tell me the *number* of the response category on the *bottom* of the card.

INTERVIEWER: FOR EACH OF THE PROPOSALS ON PAGES 12 THROUGH 32 READ THE PROPOSAL AND ASK a. AND b. FOR EACH. USE THE PROBE AFTER BOTH a. AND b. HAVE BEEN ASKED.

6. Provide for the Secretary of State to appear periodically on the floor of the House and Senate for questioning by Members.

6a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

6b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 6a. RESPONSES AFTER ASKING 6b.)
Why do you feel that way?

1803

7. Require the Executive Branch to "unify" budget categories relating to foreign affairs, enabling Congress to consider a single authorization bill covering the foreign activities of all departments and agencies well before the start of each fiscal year.

7a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

7b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 7a. RESPONSES AFTER ASKING 7b.)
Why do you feel that way?

1804

8. Require the Executive Branch to submit all "executive agreements" to Congress either as treaties for Senate ratification or as tentative agreements to become effective unless both Houses disapprove by Joint Resolution within a specified time.

8a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

8b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 8a. RESPONSES AFTER ASKING 8b.)
Why do you feel that way?

1805

9. Bring more foreign-policy-related legislation, such as international trade, finance, and agriculture, under the direct jurisdiction of the Foreign Affairs and Foreign Relations Committees.

9a.

A.	1. STRONGLY SUPPORT	B.	2. SUPPORT	3. PRO/ CON	C.	4. OPPOSE	D.	5. STRONGLY OPPOSE

9b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	1. EXTREMELY LIKELY	2.	2. LIKELY	3.	3. 50–50	4.	4. UNLIKELY	5.	5. EXTREMELY UNLIKELY

(PROBE ALL 9a. RESPONSES AFTER ASKING 9b.)
Why do you feel that way?

-1806

10. Give the GAO more authority to monitor overseas programs from a financial management point of view—such as authorizing it, on request, to evaluate programs of international organizations, and giving it "preaudit" authority and capability.

10a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

10b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 10a. RESPONSES AFTER ASKING 10b.)

Why do you feel that way?

1807

11. Establish procedures to encourage more joint hearings and legislative action by Senate Foreign Relations and House Foreign Affairs Committees.

11a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

11b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 11a. RESPONSES AFTER ASKING 11b.)
Why do you feel that way?

1808

12. Combine existing Committees on Armed Services and Foreign Relations (Foreign Affairs) to form a Committee on National Security in each House.

12a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

12b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 12a. RESPONSES AFTER ASKING 12b.)
Why do you feel that way?

1809

13. Establish an Executive-Legislative Committee to exchange information and views, keep track of reports to Congress, and arbitrate differences over security classifications on foreign policy information on a regular basis.

13a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

13b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 13a. RESPONSES AFTER ASKING 13b.)

Why do you feel that way?

1810

14. Specifically tie Executive Branch spending authority in the foreign affairs field to full Congressional access to Executive Branch information and documents on foreign affairs.

14a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

14b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 14a. RESPONSES AFTER ASKING 14b.)
Why do you feel that way?

1811

15. Create a Congressional Foreign Affairs Research Institute to provide original, policy-oriented research by independent experts on foreign policy matters for Members and Committees of Congress.

15a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

15b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 15a. RESPONSES AFTER ASKING 15b.)
Why do you feel that way?

1812

16. More precisely define by law or informal agreement the responsibilities of the Executive Branch to consult and notify Congress on important foreign policy matters.

16a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

16b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 16a. RESPONSES AFTER ASKING 16b.)
Why do you feel that way?

1813

17. Create foreign affairs liaison offices, staffed by Congress and located within major Executive Branch agencies.

17a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

17b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 17a. RESPONSES AFTER ASKING 17b.)
Why do you feel that way?

184

18. Create a Cabinet "Department of Peace" to assume primary responsibility within the Executive Branch for the formulation and conduct of foreign policy.

18a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

18b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 18a. RESPONSES AFTER ASKING 18b.)
Why do you feel that way?

1815

19. Establish an Office of General Counsel to the Congress with authority to represent Congressional interests in legal proceedings, including proceedings relating to foreign policy matters.

19a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

19b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 19a. RESPONSES AFTER ASKING 19b.)
Why do you feel that way?

1816

20. Increase Congressional oversight of the CIA by appropriating funds for it directly (rather than through other agencies), by establishing a joint committee to monitor it, by redefining its authority, or by other means.

20a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

20b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 20a. RESPONSES AFTER ASKING 20b.)

Why do you feel that way?

1817

21. Revise the statutory mandate of the CIA to make it responsible to report intelligence information and analysis *equally* to appropriate units of the Congress *and* the Executive Branch.

21a.

A.	B.		C.	D.
1. STRONGLY SUPPORT	2. SUPPORT	3. PRO/ CON	4. OPPOSE	5. STRONGLY OPPOSE

21b. (What do you think the chances are such a proposal will be adopted within the next few years?)

1.	2.	3.	4.	5.
1. EXTREMELY LIKELY	2. LIKELY	3. 50–50	4. UNLIKELY	5. EXTREMELY UNLIKELY

(PROBE ALL 21a. RESPONSES AFTER ASKING 21b.)
Why do you feel that way?

1816

22. Now, by way of summarizing much of what we've talked about, how would you say you feel, in general, about the part *individual Members of Congress* presently take in the making of foreign policy. Are you very satisfied, satisfied, dissatisfied or very dissatisfied about the part individual Members take?

A. 1. VERY SATISFIED | B. 2. SATISFIED | C. 4. DISSATISFIED | D. 5. VERY DISSATISFIED

COMMENTS:

23. Again to summarize, how would you say you feel, in general, about the role the *Congress as a whole* plays with regard to foreign policy. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied?)

A. 1. VERY SATISFIED | B. 2. SATISFIED | C. 4. DISSATISFIED | D. 5. VERY DISSATISFIED

COMMENTS:

24. And finally, how would you say you feel, in general, about the *role the Executive Branch* presently plays in foreign policy. (Are you very satisfied, satisfied, dissatisfied or very dissatisfied?)

A. 1. VERY SATISFIED | B. 2. SATISFIED | C. 4. DISSATISFIED | D. 5. VERY DISSATISFIED

COMMENTS:

1819

25. Last of all we would like to ask you if there are any things about Congressional organization with respect to foreign affairs that you feel are especially important whether or not we covered them during the interview.

These are all the questions I have. Thank you very much for your time and your help with this study.

THUMBNAIL SKETCH FINISH TIME_____

1820

Results of Second Data Coding

Question #	*Data Changes*	*Data Deletions*
3A	6	0
3C	5	1
3E	3	1
3G	6	3
3I	8	2
3K	3	5
4	1	3
4B	2	3
4D	7	1
4F	2	0
4H	9	2
4J	13	0
6A	3	0
6B	6	3
7A	3	3
7B	3	5
8A	3	0
8B	10	4
9A	3	4
9B	3	7
10A	1	1
10B	1	3
11A	6	0
11B	6	5
12A	5	1
12B	7	5
13A	5	1
13B	9	12
14A	5	1
14B	8	11
15A	7	1
15B	4	11
16A	8	2
16B	6	9
17A	4	1
17B	3	9
18A	2	4
18B	3	10
19A	4	0
19B	5	7
20A	6	2
20B	3	7
21A	3	4
21B	1	6
22	2	4
23	4	3
24	6	4
11A (Original)	1	0
11B (Original)	1	3
13A (Original)	2	2
13B (Original)	0	4
18A (Original)	1	1
18B (Original)	4	2
22A (Original)	0	0
22B (Original)	5	4
23A (Original)	1	0
23B (Original)	0	3
25A (Original)	2	0
25B (Original)	1	5
26A (Original)	1	1
26B (Original)	2	3
Totals	244	199

1821

Letters from R. Roger Majak to the Institute for Social Research, University of Michigan

September 18, 1974

Dr. Warren Miller
Dr. Donald Matthews
Dr. John Kingdon
Institute for Social Research
University of Michigan
Ann Arbor, Michigan

Gentlemen:

Senator Spong and I appreciated the opportunity to consult with you in Ann Arbor yesterday concerning appropriate courses of action to insure maximum reliability of our survey of Congressional attitudes on foreign policy matters.

In direct response to the very thoughtful suggestions you offered, we are taking the following steps:

1. A comparison of the 20 substitute respondents with the 20 original respondents they replaced, such comparison to include indices of their foreign policy voting, legislative participation, general socio-political characteristics, and interview responses. As we discussed, it is already clear that all substitutes have the same house, party, leadership and regional (geographic) characteristics as the respondents for whom they were substituted since they were drawn from the same sample strata.
2. A similar comparison of the initial 43 respondents interviewed with the final 62 respondents.
3. A second coding of all responses initially coded by the interviewers for correction of errors and resolution of any disagreement over appropriate response categories. This re-coding will be done by non-interviewers on the basis of the verbatim interview transcripts.

In addition, it is our intention to drop from the study the small portion of data found to be based upon inferences by interviewers without questions actually being asked, and to report results separately for the two questions which were revised midway through the interviewing process.

When the above steps have been taken, I intend to forward copies of the results to you, along with our tentative decisions with respect (1) to whether or not to include data from the 20 substitute respondents in the final results, and (2) on what basis we might report findings on questions administered only to the first 43 respondents.

On the basis of that information, along with an assessment we will provide of how much data (if any) was lost as a result of the double-coding process, we will hope to receive (individually or collectively) a brief statement containing your comments upon the remedial steps that have been taken, any further thoughts or recommendations you might have, and an overall assessment of the general quality of the data in the last of the MAJOR QUESTIONS FOR STUDY CONSULTANTS (Copy attached).

Sincerely,

R. Roger Majak
Congressional Specialist

Enclosure

1822

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY
2025 M Street, N.W. Washington, D.C. 20506

October 7, 1974

Dr. Warren Miller
Dr. Donald Matthews
Dr. John Kingdon
Institute for Social Research
University of Michigan
Ann Arbor, Michigan

Gentlemen:

We have now completed our data re-coding and review, and I want to report on the methods employed, results, and implications as I see them.

1. *Respondent substitutions.* An analysis was made of the reasons given by the 17 House Members in the sample who could not be interviewed. The voting behavior and participation of these Members with respect to foreign policy issues were compared with those of the Members substituted for them. Table 1 (attached) summarizes the stated reasons given by the 17 Members sampled but not interviewed. Table 2 (attached) compares the voting records of these Members with the substitutes on the four Congressional Quarterly key votes for 1973 relating to foreign policy. Table 3 (attached) compares the participation of the original sample Members and their substitutes for the four bills on which those key votes occurred.
2. *Original and revised interview questions.* Table 4 (attached) compares the political characteristics and voting behavior of the first 43 interview respondents (who were administered the original questionnaire), and the final 62 respondents (who were administered a revised questionnaire).
3. *Re-coding.* Table 5* (attached) shows the amount of data changed and deleted for each question on which interviewers recorded codes. This data revision is the result of a second-coding performed by a coder who had not participated in any earlier phase of the survey project. The coder was instructed to compare interviewer-recorded codes on each question with the interview transcript for that question, and make proposed coding changes, additions, and deletions.

The interviewers were then permitted to study the data revisions proposed by the second coder and dispute on the basis of transcript material any proposed changes with which they disagreed. In instances of intractable disagreement, the project director provided a deciding opinion.

The data appear to indicate no significant difference between the substitutes and the original sample respondents with respect to foreign policy *participation.* Table 2 indicates that the original respondents failed to cast key votes in four instances, the substitutes in five. Table 3 shows that eight original respondents participated 16 times in debate on the four bills on which key votes occurred, while seven substitutes participated 11 times. Each group offered two amendments. In four instances, original respondents participated while their substitutes did not; and in four instances substitutes participated while original respondents did not. Upon more careful analysis, we found that (contrary to our impression) only three House Members explicitly said they were not knowledgeable about foreign policy. Three others must be suspected of lacking interest or knowledge (Table 1, #'s 5, 15, and 17) by virtue of having no clear excuse for failing to grant an interview. The fact that four of the respondents who refused interviews are Members of the Judiciary Committee (which, during the period of interviewing, was deeply involved in the impeachment process) is striking. The remaining respondents were either running for higher office or had announced their retirement—excuses presumably unrelated to foreign policy. Thus, in short, six of the original respondents appear to have refused to be interviewed due to lack of interest or involvement in

*See Appendix K of the Survey Report.

1823

foreign policy, and the participation data do not indicate that the substitutes were appreciably more involved.

With respect to *voting behavior,* the two groups differ fairly sharply in several instances (particularly Vote #4, the Trade Act). On three votes, the substitutes were closer to the total House majority, but on one vote the original respondents were closer. On three votes, the substitutes had the higher proportion of "yes" votes, but on one vote the original respondents voted "yes" more often. On only one vote (#4) did a majority of one group vote "yes" while a majority of the other group voted "no." In two instances, more of the substitutes than originals supported the President's position; but in one instance more of the original respondents supported the President's position.

In view of the organizational emphasis of the interview and the Commission's work, differences in respondent's policy positions as reflected in foreign policy votes are of uncertain relevance. Even if one supposes that they are relevant, however, the apparent voting differences between the original respondents and the substitutes do not, in my judgment, show any pattern that would suggest a systematic attitudinal bias among the substitutes in comparison to the Members for whom they were substituted.

On the basis, therefore, of these two factors—participation and voting behavior—it is my judgment that the substitutes can be included in the study without biasing the findings.

The comparison of the first 43 respondents with the last 62 indicates that these two groups were substantially different in composition, the first group being disproportionately "light" on leaders, and Democrats. This, added to rather substantial voting differences between the two groups, suggests that findings on questions administered only to the first 43 respondents cannot be reported as representative of the sample as a whole.

Finally, the second-coding process resulted in proposed changes in 269 bits of data, and proposed deletion of 283 bits of data. 244 changes in data were sustained (a small proportion of them gains in data, i.e. addition of codes where no code had previously appeared); 199 data deletions were sustained. This constitutes a net revision (change and deletion) in the data of about 7%. The highest incidence of deletions on any single question was 12 (question 15b.)

We will appreciate any comments you may have on these findings and evaluations. I will be available by telephone to answer any questions you might have and to discuss any of these matters in greater detail. Thereafter, we hope it will be possible to formulate the kind of brief overall assessment of the general quality of the data and procedures employed in this study mentioned in my earlier letter (September 18, 1974).

Sincerely,

R. ROGER MAJAK
Congressional Specialist

Enclosures

1829

Memorandum from the Statistical Research Division

U.S. DEPARTMENT OF COMMERCE

Social and Economic Statistics Administration
Bureau of the Census
Washington, D.C. 20233

October 30, 1973

MEMORANDUM FOR Mr. R. Roger Majak
Congressional Specialist
Commission on the Organization of the Government for the Conduct of Foreign Policy

From: Donald G. Larson
Statistical Research Division

Subject: Expected Reliability of Estimates Tabulated from a 1/5 Sample of Members of Congress—i.e., a sample of 20 Senators and 87 Representatives

Based on our discussion of October 25, I've calculated the following sampling errors so as to give you some indication about the reliability to be expected from the planned sample. The expected sampling error associated with a proportion in the neighborhood of 50% calculated from the sample would be the following:

Unit of Study	*Sampling Error*
Congress (both houses)	4%
Senate	9%
House of Representatives	4.5%

The interpretation here is that for a *sample estimate* which showed, for example, that 50% of the Congress were in support of a particular issue a statement could be made that if *all* 537 Senators and Representatives were surveyed on this issue the proportion would fall within the interval 50% ± 4% (between 46% and 54%). The chances that this statement would be correct would be 67 out of 100. By widening the interval we may increase the probability that a proportion for the complete Congress falls within the interval. For example, the 40% sampling error could be doubled forming the interval 50% ± 8% (42% to 58%)—our chances of being correct in saying that the actual proportion lies within this interval would now be increased to 95 out of 100. Similar statements may be made for

(a) Senate separately—50% ± 9% for a probability of 67 out of 100 and 50% ± 18% for a probability of 95 out of 100

(b) The House of Representatives separately—50% ± 4.5% for a probability of 67 out of 100 and 50% ± 9% for the higher probability level.

The point to be remembered here is that any tabulations made for the Senate *separately* would be subject to a great deal of sampling error—in the example a *sample* estimate of 50% would only indicate that the *actual* proportion would lie somewhere in between 1/3 and 2/3 of the total Senate. Because of this large variability it would be difficult to make conclusive statements concerning comparisons between the Senate's response to a question and the House of Representative's response unless the differences were very large.

1825

Mention was made that thought had been given to sampling twice as many Senators; i.e., use a sampling fraction of 2 in 5 providing a sample size of 40 Senators. With this increased sample size the sampling error for the Senate separately would be reduced from 9% to about 5.5% with the corresponding intervals reduced to 50% $\pm$ 5.5% and 50% $\pm$ 11%.

1826

List of Interview Proposals

(*NOTE:* The following statement was used in all interviews to introduce the reform proposals: "This next set of questions consists of brief descriptions of some proposals that have been made for changing the role of Congress in the area of foreign affairs. These proposals were picked more or less at random from recent commentary about Congress and foreign policy. For each proposal will you indicate whether you would strongly support it, support it, oppose it, or strongly oppose it. For each proposal I would also like to know what you think the *chances are* such a proposal will be adopted within the next few years. Do you think it is extremely likely, likely, that there is a 50–50 chance, that it is unlikely or extremely unlikely that it will be adopted.")

1. "Provide for the Secretary of State to appear periodically on the floor of the House and Senate for questioning by Members."
2. "Require the Executive Branch to 'unify' budget categories relating to foreign affairs, enabling Congress to consider a single authorization bill covering the foreign activities of all departments and agencies well before the start of each fiscal year."
3. "Require the Executive Branch to submit all 'executive agreements' to Congress either as treaties for Senate ratification or as tentative agreements to become effective unless both Houses disapprove by Joint Resolution within a specified time."
4. "Bring more foreign-policy-related legislation, such as international trade, finance, and agriculture, under the direct jurisdiction of the Foreign Affairs and Foreign Relations Committees."
5. "Give the GAO more authority to monitor overseas programs from a financial management point of view—such as authorizing it, on request, to evaluate programs of international organizations, and giving it 'preaudit' authority and capacity."
6. "Establish procedures to encourage more joint hearings and legislative action by Senate Foreign Relations and House Foreign Affairs Committees."
7. "Combine existing Committees on Armed Services and Foreign Relations (Foreign Affairs) to form a Committee on National Security in each House."
8. "Establish an Executive-Legislative Committee to exchange information and views, keep track of reports to Congress, and arbitrate differences over security classifications on foreign policy information on a regular basis."
9. "Specifically tie Executive Branch spending authority in the foreign affairs field to full Congressional access to Executive Branch information and documents on foreign affairs."
10. "Create a Congressional Foreign Affairs Research Institute to provide original, policy-oriented research by independent experts on foreign policy matters for Members and Committees of Congress."
11. "More precisely define by law or informal agreement the responsibilities of the Executive Branch to consult and notify Congress on important foreign policy matters."
12. "Create foreign affairs liaison offices, staffed by Congress and located within major Executive Branch agencies."
13. "Create a Cabinet 'Department of Peace' to assume primary responsibility within the Executive Branch for the formulation and conduct of foreign policy."
14. "Establish an Office of General Counsel to the Congress with authority to represent Congressional interests in legal proceedings, including proceedings relating to foreign policy matters."
15. "Increase Congressional oversight of the CIA by appropriating funds for it directly (rather than through other agencies), by establishing a joint committee to monitor it, by redefining its authority, or by other means."
16. "Revise the statutory mandate of the CIA to make it responsible to report intelligence information and analysis *equally* to appropriate units of the Congress *and* the Executive Branch."

1827

Summary of Comments on Sixteen Specific Reform Proposals

Revised Questionnaire Number

6. (A) *Basis for Support, Opposition*

Supporters tended to see the proposal as a means of enhancing Congressional information on Executive Branch plans with respect to foreign policy. A few supporters favored it as a means of constraining the actions of the Secretary of State and the Executive Branch. "The Secretary of State will always have to consider," one respondent said, "how his policies will sound to the Congress". Other Members justified their support in terms of increasing the "inputs" and "involvement" of Members—particularly Members on committees other than Foreign Affairs or Foreign Relations—in foreign policy, and lessening the possibility senior Members would be "coopted" by the Executive Branch.

The major stated basis for opposition to the proposal was that it would be unwieldy because of the size and organization of the Congress, and would lead to "grandstanding" and irresponsible behavior by some Members. A substantial number of opponents also saw possible constitutional problems with the proposal, primarily as a violation of the "separation of powers" principle. Many who saw such constitutional problems tended to equate the proposal with a "parliamentary" form of government which they considered undesirable. A third basis for opposition was that nothing would be gained by the proposal—that Secretaries of State could easily avoid difficult questions. Others said the proposal would increase partisanship and inhibit compromise by forcing Members to defend the positions of a Secretary of State from their own party.

6. (B) *Suggested Modifications, Caveats, and Alternatives*

The caveat most frequently mentioned by both supporters and opponents was that any question period would have to be limited. Several respondents felt questions should be channeled through the Speaker, subject matter should be delimited, questions should be submitted in advance, and that Members of the relevant committees should have priority in posing questions. Many Members argued for questioning to be done in Executive session, while a few said questioning sessions should be televised to "show the public the Congress' involvement in foreign affairs." Several expressed concern that if the Secretary of State were to be subject to floor questioning, all other Cabinet officers would have to be subjected to similar questioning.

The current system of appearances by the Secretary before relevant committees was the most commonly mentioned alternative to floor questioning. Other Members said the Secretary of State should appear for questioning before party caucuses, small groups of Members, or joint meetings of the Foreign Affairs and Foreign Relations Committees, both formally and informally. Some Members said Members not on the Foreign Affairs or Foreign Relations Committees should be permitted to ask questions of the Secretary of State by submitting such questions to the Committee Chairmen to be asked during sessions of those Committees.

6. (C) *Basis of Likelihood*

Most Members who saw the proposal as "unlikely" cited Executive Branch and Committee opposition as the basis for their judgment, along with absence of strong support in Congress. "It would take a couple of first-rate disasters before Congress would go that far," one respondent commented. Others saw it as unlikely simply because it represents a major departure from current practices.

7. (A) *Basis for Support, Opposition*

Widespread support for consolidations of budget categories was tempered by desire by many Members to preserve legislative flexibility and opportunity to consider individual programs and expenditure items. Supporters of budget consolidation and unification cited "better cost overview of foreign affairs" and "better priority setting" as grounds for support.

Some Members opposed the proposal on just such grounds—that it would interfere with Congress' "item veto". Other reasons for opposition included the need to link strong programs with weak ones in order to get them through, and possible interference of budget consolidation with existing committee and subcommittee jurisdictions. Some opponents argued that some spending bills are already too large, permitting items to be hidden and making careful examination of programs difficult.

1828

7. (B) *Suggested Modifications, Caveats, and Alternatives*

Both supporters and opponents emphasized that budget consolidation should not preclude separate Congressional consideration of individual programs. Recommended alternative proposals focused on the idea of breaking down a unified foreign affairs budget into three or four major bills. There was little agreement, however, over what should be contained in each of those bills. Some respondents favored a single foreign aid bill, while others argued for separating military and economic assistance.

7. (C) *Basis of Likelihood*

Most Members who saw the proposal as "likely" cited (then) current Congressional interest in Congressional budget reform legislation, which respondents saw as similar to this proposal. Those who saw the proposal as "unlikely" tended to cite Executive Branch and committee opposition. Several said the Executive Branch prefers budget fragmentation as a means of "slipping items through". A few respondents said it would be technically difficult to get agreement on which expenditures are foreign affairs expenditures, and which domestic, particularly in areas like agriculture.

8. (A) *Basis for Support, Opposition*

Supporters tended to see the proposal as a means of keeping Congress and the people involved and influential in foreign policy, and as a restraint on Executive Branch action. Some saw it as a means of increasing Congressional information on foreign policy.

Opponents defended their position primarily on grounds that the proposal would "tie the hands" of the Executive Branch. A few charged that requiring Congressional approval of Executive agreements would excessively limit "flexibility" in foreign relations. Some desirable agreements, they said, could not gain Congressional approval. Some opponents argued that Congress is not equipped to deal with the detail necessary to evaluate Executive agreements, and the Executive Branch should not have to provide such detailed information to the Congress. A few Members felt such a provision—particularly if it involved House action on executive agreements—would be unconstitutional. Others felt that such a provision would "bog Congress down"—there are simply too many executive agreements for Congress to deal with.

8. (C) *Basis of Likelihood*

Of those who thought the change "unlikely", most cited Executive Branch opposition as the basis for their judgment. A few respondents emphasized what they saw as a need for a Constitutional amendment to implement such a change, making it "unlikely". A substantial number of respondents saw the proposal as "50–50". Most of these respondents saw the proposal as a matter of confrontation between the Executive and Legislative Branches in which either Branch has about an equal chance of prevailing, depending upon events. Those who thought the proposal "likely" tended to justify their view in terms of a Congressional reawakening and new Congressional determination to assert itself in foreign policy. One respondent thought the change "likely" during the (then) current (Nixon) Administration because "Congress is anxious to pull his tailfeathers".

9. (A) *Basis for Support, Opposition*

Reasons given for support of this proposal fall into two rather neat categories—each about equally cited. The first—that the Foreign Affairs Committee is underworked, while other Committees (particularly Ways and Means) are overworked. Giving Foreign Affairs more foreign policy-related legislation is justified as a way of better distributing the legislative workload. Second—that the Foreign Affairs Committee can do a better job on foreign policy legislation than other committees, or than is possible with jurisdiction in the foreign policy field fragmented. A few Members mentioned that Foreign Affairs Committee Members are "best qualified" to act on foreign policy matters, while others simply said that having jurisdiction under a single committee would permit more thorough and rational review of foreign affairs legislation.

Opponents generally made opposite arguments. Among opponents, many expressed the view that the Foreign Affairs and Foreign Relations Committees do an inadequate job in the jurisdiction they now have, and lack the expertise to assess the domestic aspects of specialized aspects of foreign policy, like foreign agricultural and monetary policy. Several opponents argued that distribution of foreign policy related legislation among several committees expands the number of Members involved in foreign policy, and could bring specialized expertise to bear on foreign policy problems. One respondent expressed doubt that the Congress can ever be a proficient coordinator of policy, even if all foreign policy legislation were concentrated in one committee.

9. (B) *Suggested Modifications, Caveats, and Alternatives*

Recommended alternatives and modifications ranged from the status quo with respect to Committee jurisdictions, to joint and multiple committee referral and action on foreign affairs bills. Several respondents said they would favor the proposal if Members with agricultural, trade, monetary and other specialized knowledge were put on the Foreign Affairs and Foreign Relations Committees. Many doubted, however, that this would be the case.

9. (C) *Basis of Likelihood*

Among those who saw this proposal as "unlikely", the rationale most frequently cited was that

1829

jurisdictions are never easily changed, that no one likes to give up jurisdiction, and that the Committees affected (Agriculture, Ways and Means, Finance, Commerce) would fight it. Generally, those who saw the proposal as about "50–50" said it hinged on the outcome of the Bolling proposals in the House, which they saw as having about an even chance of being approved or rejected. Those who thought the proposal "likely" tended to have more optimistic assessments of chances of the Bolling report. One respondent thought it likely "because we've had so many messes in foreign policy".

10. (A) *Basis for Support, Opposition*

Numerous supporters of this proposal expressed general confidence in the GAO and approval of its work. Some said more use should be made of the agency as a means of increasing exercise of Congress' oversight responsibilities. Several supporters, however, expressed concern over possible negative diplomatic and operational effects of GAO activities in international organizations. As one respondent put it: "We should know what's happening to our money in various regional and world banks. But, many other nations may require audits, crippling the banks' operations".

Several Members expressed uncertainty about the proposal. Some felt the GAO already had the authority mentioned in the proposal. Others indicated lack of familiarity with the concept of "preaudit".

Among opponents, the most commonly cited view was that the GAO should not be permitted to get into "policy" or "decision" processes. Those who mentioned this tended to view "pre-audit" as just such an intrusion into policy and decision making. One respondent felt Congress should concentrate on long-range questions more than details of past expenditures. Others generally felt GAO has enough power already or that it should concentrate on domestic matters. A few respondents expressed skepticism about GAO's expertise in the foreign relations field.

10. (B) *Suggested Modifications, Caveats, and Alternatives*

The most commonly mentioned alternative to the proposal was that Congress itself should perform these functions—particularly preaudit review —rather than delegating such responsibility to the GAO. Several Members mentioned that new Congressional budget committees might perform this function, or a Congressional Office of Budget. One respondent felt the proposal should be limited to foreign aid programs. Another said initiative for the idea should come from the UN or other international organizations. Still another suggested creating a special division of GAO. Several Members felt closer scrutiny and control should be exercised by the Congress over GAO.

10. (C) *Basis of Likelihood*

The most commonly voiced reason that Members thought the proposal "likely" was the general confidence and support of their colleagues for the GAO. A few Members put it in more specific terms. "Congress is feeling taxpayer pressure to find out if foreign expenditures are worth the money". Another said, "anything that would bring a closer accounting of foreign aid has a good chance of passing". Still another: "reforms are likely when the Executive Branch and the Legislative Branch are controlled by different parties". Several Members who thought it "unlikely" simply were unaware of support for the proposal. "Neither the Administration nor Congress will push for it", one commented. Others felt the Executive Branch—particularly the State Department—would oppose it. "The foreign aiders", one respondent said, "don't want GAO looking over their shoulders". Resistance by international organizations to the idea of GAO intrusion in international affairs was also cited.

11. (A) *Basis for Support, Opposition*

Support for the proposal was justified mostly on the grounds it would save time both for the Congress and the Executive Branch, and would increase House-Senate partnership and coordination. Members of the House particularly felt it would upgrade the role of the House in foreign affairs. Opponents emphasized that joint committee actions are "unwieldy"—the number of Members being too large for effective questioning. Several Members opposed the proposal on grounds that it moves in the direction of "unicameralism" and abandonment of "checks and balances". Others said it would complicate scheduling, particularly presuming joint hearings would be in addition to (not in lieu of) separate hearings. Other Members said it would weaken individual Member influence and independence, and that joint activities are not needed because printed hearings of each body are available to the other. Several observed that joint meetings have not proved successful because of "jealousies" between House and Senate Members.

11. (B) *Suggested Modifications, Caveats, and Alternatives*

Several Members observed that joint *subcommittee* meetings would be more manageable and, therefore, more desirable, than joint meetings and activity at the full committee level. The possibility of a joint House-Senate staff and greater use of informal consultation among Members of the Senate and House Committees through joint travel and conferences were also suggested. One respondent suggested that activities of the two committees be coordinated by tacit agreement as is done by the Appropriations Committees. Several emphasized that joint activities should remain voluntary and not "structured" or otherwise required.

1830'

11. (C) *Basis of Likelihood*

Among those who thought the proposal "likely", several indicated it was likely only if respective committee chairmen pressed for it. By far, the most common reason for Members judging the proposal "unlikely" was that the Senate is protective of its foreign policy prerogatives, and general competitiveness and some hostility between the two Houses.

12. (A) *Basis for Support, Opposition*

Supporters of the proposal tended to justify it in terms of permitting a broader perspective on interrelated foreign and military policy matters. Some saw it as a way of reducing the influence of the "military-industrial" complex on foreign policy. One respondent noted that "most amendments to Armed Services Committee legislation come from Members of the Foreign Affairs Committee". Combining the two would, the respondent noted, work out these disagreements and save legislative time.

Opponents of the proposal tended to see the jurisdiction of each of the Committees (Armed Services and Foreign Affairs) as distinct and less interrelated than those who support the proposal. "Most of the work of the two committees", one respondent said, is not germane to the other's, and is unrelated". Other opponents felt the military influence would tend to dominate foreign policy considerations, further "militarizing" U. S. foreign policy. Still others saw the proposal as concentrating too much power and control over vital legislation in a single committee, overloading it with responsibilities. One respondent said the proposal itself "endangered the national security".

12. (B) *Suggested Modifications, Caveats, and Alternatives*

By far, the most commonly suggested variation of this proposal was more joint meetings between the two committees on matters of mutual concern. There was considerable agreement that more liaison between the committees is needed. One respondent suggested "rotating staff" to keep Members of each committee informed of the views and activities of the other. Other respondents suggested giving each committee oversight authority over some legislative jurisdiction of the other—as proposed by the Bolling Committee. One respondent suggested a single committee in the House, but separate Foreign Affairs and Armed Services Committees in the Senate, where both Committees are strong and the Foreign Relations Committee has special powers (over treaties and diplomatic confirmations).

12. (C) *Basis of Likelihood*

Those who considered the proposal "likely" tended to look to the leadership and (in the House) the Bolling Committee to support it. Most Members who opposed it, however, said both the Committees involved would resist, and that mixing the "liberal" Foreign Affairs Committee with the "parochial" Armed Services Committee would be like mixing "oil and water".

13. (A) *Basis for Support, Opposition*

Supporters emphasized the need for greater Executive Branch sharing of information and liaison, and for a check on classification of information. One proponent said the measure would "regularize communications". Opponents said it would by-pass standing committees, and that consultation and liaison should be done there. Others said it might violate Constitutional separation of powers. Some feared the Executive Branch would use it to co-opt Congress and weaken Congressional checks and balances.

13. (B) *Suggested Modifications, Caveats, and Alternatives*

Alternatives and modifications to this proposal included the general idea of keeping Executive-Legislative liaison informal rather than formalizing it. One respondent felt classification is a "housekeeping function" that could be handled by an existing Committee, like House Administration or Senate Judiciary. Several respondents proposed creation by statute of an independent board of commission to set classification guidelines and oversee their implementation by both Legislative and Executive Branches. Several respondents favored making the information classification system statutory.

13. (C) *Basis of Likelihood*

Those who saw it as "unlikely" cited Executive Branch opposition and possible unconstitutionality. One respondent noted it "would be more likely if both Branches were controlled by one party". Another respondent said he feels the President presently meets informally with what amounts to a joint Executive-Legislative consultative committee.

14. (A) *Basis for Support, Likelihood*

Supporters generally justified their position on grounds that withholding appropriations is, as one respondent put it, "the only real muscle we have". While some supporters argued for unlimited Congressional rights to information from the Executive Branch, others said they favor expanded but not necessarily complete access to information. Others saw the proposal largely as a way of showing "willingness to stand up to the Executive Branch".

Opponents generally cited the need to protect national security and "executive privilege". Several regarded the proposal as unconstitutional, or noted intelligence agencies and activities should be exempt from any such mechanism. A few respondents cited probable Presidential veto as the basis for their own opposition.

14. (B) *Suggested Modifications, Caveats, and Alternatives*

Several Members proposed that some areas of information should be more accessible than others, and that this should be defined by statute, though such a statute would be difficult to write. One respondent suggested a court case and possible legislation to define executive privilege. Several Members emphasized need for safeguards to assure protection of national security information. Others urged protection of information on negotiations and contacts with foreign countries. One respondent said information should be exchanged on an informal basis without formal sanctions to elicit it, and another noted that "we need reconciliation between the Executive Branch and Congress, not retaliation". Several Members felt full access to foreign policy information should be limited to the committee(s) with jurisdiction; others felt that any withholding of appropriations should be "limited and in concert with a specific instance".

14. (C) *Basis of Likelihood*

Presidential veto was the most commonly mentioned basis for views that the proposal is "unlikely". Those who saw the proposal as "likely" cited increased Congressional assertiveness and a possible influx of new Members with a greater desire for fuller access to Executive Branch information.

15. (A) *Basis for Support, Opposition*

Supporters of the proposal generally defended it in terms of what they saw as Congress' need for more information in more useable form. A few expressed the feeling that the Congressional Research Service does not do an adequate job, particularly for individual Members, and that another source of such work is needed. Some supporters put conditions on their approval—mostly reasonable cost and assurance of a genuinely non-partisan research staff.

Some opponents of the proposal felt the Congressional Research Service is doing an adequate job. Others felt the current system is inadequate, but that a research organization responsive to Congress is not the answer to the problem. The most commonly expressed basis for opposition is that Committee staffs should be looked to for research and information support. Other opponents expressed the view that it is already possible for Congress informally to get all the outside research help it needs. Some felt Congress already receives too much information and advice. "There are enough people to tell us what to do now", one respondent said. Several Members said they simply oppose creating any new institution, organization, or bureaucracy for any purpose. Several expressed doubt that a research institute could remain nonpartisan. "It would become a tool of the majority", one Member charged. Others said they did not believe Congress should initiate policy; and that such a research group would only encourage "the tail to wag the dog". One respondent felt a separate Congressional research bureaucracy might create an impression of confrontation with the Executive Branch. "As long as we realize we are not adversaries", he said, "we don't need an organization like that".

15. (B) *Suggested Modifications, Caveats, and Alternatives*

Prominent among the alternatives and modifications to the proposal mentioned by respondents was "greater consultation between Committee staffs and outside experts". One respondent recommended that any such research institute be "part of a larger program to coordinate independent research". One respondent observed that "Congressional reforms to produce strong leaders and decisive majorities are more important". Other Members urged revision of committee jurisdictions, improved efforts to "search out knowledgeable witnesses", and increased staffing and use of consultants and specialists by the Library of Congress.

15. (C) *Basis of Likelihood*

Those who thought the proposal "likely", tended to see Congress "already moving in that direction". "We'll try anything", one respondent said. One respondent saw the proposal as "likely" because of increased interest in foreign affairs among the growing number of new Members of Congress.

Those who saw it as "unlikely" mentioned lack of determined support and general satisfaction with the information and research currently available to Congress in the foreign policy field. The most common rationale, however, was that the current system of Committee staffing and Committee consultation with outside experts is adequate, and Members would see no need for such an institute.

16. (A) *Basis for Support, Opposition*

Supporters of the proposal tended to cite Congress' need for better and more timely information. Some expressed preference for informal arrangements—others for statutes. Opponents expressed doubt that clarification was feasible. "Difficult to codify", one respondent remarked. Another said policies vary too much to permit clear guidelines for consultation. Others thought existing laws—particularly the recently passed War Powers Act—provide adequate guidelines. Still others thought clarification would simply create antagonism, and that effective consultation is ultimately dependent upon the President's and Secretary of State's sensitivity to Congress' needs. "The Constitution's requirement for advice and consent of the Senate is adequate," one respondent said.

Opponents generally stressed a preference for informality. Supporters of the proposal seemed about equally divided between those preferring

1832

statutes and those preferring informal agreements as the appropriate device. Several stressed that such provisions would intrude on Presidential prerogatives.

16. (B) *Suggested Modifications, Caveats, and Alternatives*

The most frequently mentioned alternative was more active action by responsible committees and committee chairmen. Legislation creating the Joint Committee on Atomic Energy was cited several times as a model for insuring close consultation based upon clear guidelines. Others said the War Powers Bill would do the job and was enough. Several Members urged greater attendance by Members at State Department briefings, and other informal means of information exchange and consultation. Some Members expressed views similar to one who said that "negotiating and trust are superior to statutes requiring consultation". One respondent suggested an initial step should be to identify those measures requiring Senate ratification. One Member suggested that Congressional party leaders could transmit to the Congress more information received from the Executive.

16. (C) *Basis of Likelihood*

Those who thought the proposal "likely" generally cited recent passage of the War Powers Bill as evidence of Congress' interest in greater consultation and precision about Executive Branch responsibilities. Opponents mentioned what they saw as recent improvements in Congressional-Executive relations in the foreign policy field brought about by Secretary of State Kissinger. Others cited difficulties of codification and reaching agreement among Members. Presumed Executive Branch opposition was also mentioned.

Several Members thought probabilities hinged on future events and actions by the Executive Branch—new statutes and agreements with Congress being likely only if the Executive Branch fails to provide adequate information. One respondent opined that "a Congress that delegates powers is unlikely to demand or get their return". Several Members suggested Congress would most likely act in a crisis if it failed to get accurate or timely information.

17. (A) *Basis for Support, Opposition*

Supporters generally said the proposal would be helpful in assuring information for Congress or, at least, would "do no harm". One supporter said it struck him as "better than having agency lobbies". Opponents generally said it was a violation of separation of powers, constituted "spying" on the Executive Branch, or that Congressional staff would be isolated or coopted by the agencies to which they were sent and would then pose the same problem that current liaison staffs pose. Some opponents of the proposal, however, noted that there is need to do something about Congressional liaison. Many noted the proposal would increase bureaucracy without substantial benefits, some saying that existing Congressional liaison staffing is adequate. Other respondents pointed out that Congressional staff liaison personnel would still be dependent upon agency information.

17. (B) *Suggested Modifications, Caveats, and Alternatives*

Alternatives or modifications frequently mentioned: that the Foreign Affairs and Foreign Relations Committees do this if it is to be done; greater Committee oversight; that liaison people be used who are independent of either legislative or Executive Branches; that legislators and staff serve during recesses in the Executive Branch (as is done in the Wisconsin State Legislature); that the "California budget system" be used; that there be mutual exchanges of staff between Congress and the Executive agencies; that State Department briefings and current liaison staffs do an adequate job. One respondent proposed that agencies hire "able former congressmen".

17. (C) *Basis of Likelihood*

Members who considered the idea "unlikely" cited Executive Branch opposition, and other factors. "I don't want Executive Branch staff in my office", one Member commented. Several thought the proposal "divisive".

18. (A) *Basis for Support, Opposition*

Most supporters of this proposal indicated that they feel it has no more than symbolic value—that it is useful to focus attention on peaceful purposes.

Opponents generally said that they saw no difference between a Department of Peace and the Department of State—that peace was the mission of the Department of State, the Arms Control and Disarmament Agency, the Department of Defense, and all government agencies. Many charged that the proposal represented a "semantic" mirage. Some respondents said they opposed creation of any new Cabinet departments.

18. (C) *Basis of Likelihood*

Virtually all respondents—supporters and opponents—saw chances for the proposal as "unlikely". "Because of the people who are pushing it", one respondent said. Several cited Executive Branch opposition, particularly because the proposal runs counter to Executive Branch legislation to consolidate cabinet departments. One respondent said it was unlikely because it ignores the role of the military in keeping peace.

"It's persons, not titles and organizations that matter", one respondent commented. Another said "recovery and recommitment to the ethical content of foreign policy" is more important than departmental name changes. Another urged attention to Congressional control of foreign policy in lieu of name changes. One respondent suggested the State Department be given an explicit peace mandate.

1833

19. (A) *Basis for Support, Opposition*

Supporters of the proposal generally cited an increased number of legal problems Congress and its Members have faced in recent years, and the expense of retaining private attorneys. Several Members felt a General Counsel to Congress would help in making information forthcoming from the Executive without need to resort to court action. One supporter stipulated that such Counsel should be available to all Members.

Opponents of the proposal tended to feel Congress should stay out of legal proceedings. "Lawsuits", one respondent said, "mean the failure of politics". Other opponents felt a General Counsel for Congress would duplicate powers of existing committee counsels and the Attorney General. Several said the occasions when Congress needs help in litigating are rare. Finally, some respondents cited mechanical difficulties—under what circumstances would such a General Counsel be authorized to undertake litigation? "There is no unified Congressional interest", one respondent commented. Another said it would "pose a problem of political conflict and staffing". Several noted that Congress has the power to hire special attorneys whenever it needs them on an ad hoc basis.

19. (B) *Suggested Modifications, Caveats, and Alternatives*

Employment of special counsel by legislation on an ad hoc basis was the major alternative proposal suggested by respondents. Others suggested creation of a position of "Adviser on International Law" on the Foreign Affairs and Foreign Relations Committee staffs.

Others suggested any legal counsel to Congress should have the job of checking Executive Branch agencies and advising Members on international law. Several respondents said only pressing need for more and better information from the Executive Branch would, in their minds, justify creation of a General Counsel to Congress.

19. (C) *Basis of Likelihood*

Those who saw the proposal as relatively "likely" mentioned that some State legislatures have employed such Counsels successfully. One respondent said that impoundment of funds has demonstrated a need and makes the proposal likely to be approved.

Those who saw the proposal as "unlikely" cited adequate legal services already available to Congress. Others mentioned the need to economize in government and avoid creating expensive new bureaucracies. One respondent charged that the same people supporting the proposal complain of the courts extending the scope of their activities without justification. One respondent said interest in the idea was a temporary offshoot of Watergate. Another said it would conflict with the Legal Office in the Department of State.

20. (A) *Basis for Support, Opposition*

Supporters of the proposal tended simply to feel that current mechanisms and procedures for overseeing the intelligence community are inadequate. Several said Congress is tired of playing "cops and robbers", and that more oversight is necessary. Opponents, on the other hand, tended to feel that current oversight is adequate, and that the risks involved in increased oversight are not justified. "Congress can't keep secrets," several respondents charged. One respondent noted that the "CIA already reports to three subcommittees, and another one won't change things". Several respondents said that increased oversight and direct budgeting for intelligence agencies would threaten necessary secrecy and hamper agency operations. The view that those in Congress who have intelligence oversight responsibilities "know what's going on" and are doing their job was mentioned by a few respondents. One respondent said "Congress wants covert operations, and it doesn't want to know everything about them, for security reasons". Some Members said adherence to existing laws by the intelligence agencies would correct problems and that no new laws or reorganization is necessary. More oversight, several opponents argued, "has no purpose except to diminish the role of the CIA" and would "destroy its effectiveness in critical areas".

20. (B) *Suggested Modifications, Caveats, and Alternatives*

Modifications of the proposal ranged from "widen the circle of Congressional overseers" to "assign jurisdiction to the Foreign Affairs and Government Operations Committees". Several Members recommended approval of the Bolling Committee recommendations concerning classification of information. One respondent recommended removing CIA's operating authority and making it simply a "clearing house and analysis agency" with collection done by other agencies. Several respondents suggested that new oversight authority be given to existing standing committees, while others urged creation of a joint or select committee to legislate and oversee intelligence matter.

20. (C) *Basis of Likelihood*

Those who thought the proposal "likely" generally cited strong Congressional concern about alleged abuses of authority by the CIA. Those who thought it "unlikely" said there's not much enthusiasm for change in Congress. "There are certain things nobody can afford to know", one respondent said. Others predicted strong opposition from Congressional leaders and from those who do know about agency activities. "Congress", one respondent said, "is not ready to bite that one off". Another: "You can overdo too much of carrying your national security program on your sleeve".

21. (A) *Basis for Support, Opposition*

1874

Supporters of the proposal generally mentioned Congress' need for greater information, and expressed confidence that secrecy could be preserved where necessary. Several supporters said that Congress should exercise "restraint to protect the information it gets". One respondent said that Congressional access to intelligence reports "might change Congressional views on Executive Branch positions". Opponents expressed pessimism that Congress could preserve confidentiality. Several said that the CIA could not function under such a proposal. Others said Congressional information on CIA operations was more important than access to intelligence reports.

21. (B) *Suggested Modifications, Caveats, and Alternatives*

Several respondents emphasized that "safeguards" and careful "selection of Members" would be necessary if the proposal were approved. Others felt that more information simply should be demanded by Congressional leaders and existing oversight authorities. Several respondents thought "better consultation and liaison between the Executive Branch and the Congress" would be preferable to the proposal, and that intelligence agencies should report exclusively to the Executive Branch. Some respondents said they favored access to intelligence reports by Armed Services and Foreign Affairs Committees only. Several recommended a select screening committee to "sanitize" information received and made available to Members. Several respondents said staff people should not have access to intelligence reports. A few respondents urged better reporting by the agency to Congress without formal organizational changes.

21. (C) *Basis of Likelihood*

Those who thought the proposal "likely" tended to see Congress as already moving in this direction due to dissatisfaction with agency activities and Congressional oversight. Opponents emphasized security risks as the major basis for their judgment that Congress would not approve such a proposal.

1835

Chronology of Events

1. Watergate Chronology

1973 Nov. 1 *New Attorney General, Special Prosecutor Named.* President Nixon announces that he has nominated Senator William B. Saxbe (Rep., Ohio) for the post of Attorney General. Acting Attorney General Bork announces the appointment of Leon Jaworski as the new Watergate Special Prosecutor.

1973 Nov. 4 *Republican Call for Nixon Resignation.* Senator Brooke (Rep., Mass.) says (in a television interview) that he has "reluctantly" come to the conclusion that President Nixon should resign, the first Republican Senator to publicly urge the step. On the same day (Nov. 4), the *New York Times*, the *Detroit News*, the *Denver Post* and *Time* magazine publish editorials calling for Nixon's resignation.

1973 Nov. 5 *Election "Dirty Tricks" Specialist Sentenced.* Donald H. Segretti sentenced (by a Federal District Court in Washington) to 6 months in prison for attempting to disrupt the 1972 Democratic presidential primary in Florida. On the same day (Nov. 5)—*Legal Position of Watergate Special Prosecutor Defined.* Leon Jaworski is sworn in as the new Watergate Special Prosecutor.

1973 Nov. 14: Federal District Court Judge Gerhard A. Gesell (in Washington) rules that Acting Attorney General Bork acted illegally when he fired Watergate special prosecutor Archibald Cox.

1973 Nov. 9 *Original Watergate Defendants Sentenced.* E. Howard Hunt, Jr. is given a final sentence of 30 months to 8 years in prison for his role in planning the Watergate breakin. The 5 who were caught attempting to carry out the plan are sentenced to prison terms ranging from at least 1 year to at least 18 months.

1973 Nov. 12 *Illegal Campaign Contributions.* Braniff Airways and its board chairman plead guilty to making an illegal corporate contribution of $40,000 to the Committee to Reelect the President and are fined $5,000 and $1,000 respectively.

1973 Nov. 13: Gulf Oil Corp. is fined $5,000 for making illegal contributions totalling $125,000.

On the same day, Ashland Petroleum Gabon is fined $5,000 for giving $100,000 to the Nixon campaign and Chairman Orin E. Atkins of the parent Ashland Oil Co. is fined $1,000 for approving the contributions.

1973 Nov. 30 *Watergate Grand Jury Extended.* President Nixon signs into law a measure to extend the life of the Watergate Grand Jury for 6 months (and for an additional 6 months at the discretion of the Federal District Court in Washington).

On the same day—White House "Plumbers' Chief Pleads Guilty—Former presidential aide Egil Krogh (who headed the special White House investigation unit known as "the plumbers") pleads guilty to a charge of criminal conspiracy in the burglary of Daniel Ellsberg's former psychiatrist's office.

1973 Dec. 6 *New Vice President.* Gerald R. Ford is sworn in as the 40th Vice President after the House of Representatives (by a vote of 387 to 35) approved his nomination under the 25th Amendment procedures to fill the vacancy.

1973 Dec. 8 *Nixon Releases Personal Finance Data.* President Nixon releases 50 documents (including his income tax reports for 1969 through 1972) "to answer questions that have arisen, to remove doubts that have been raised and to correct misinformation that currently exists about what I have earned and what I own." Nixon notes (in an accompanying statement) that even with his disclosures questions may remain regarding the tax consequences of his gift to the government of his vice presidential papers and of the sale of property in San Clemente, California (on which he reported no capital gain). He adds that, therefore, he has requested the Joint Congressional Committee on Internal Revenue Taxation to examine the procedures relating to both matters and to decide whether the income tax returns should have shown different results. Nixon also describes as "grossly inaccurate" charges that the government spent between $6 million to $10 million on improvements at his San Clemente home. He says that only $68,000 was spent on the home itself, another $635,000 on improving security arrangements on the grounds around the house, and almost $6 million on the Western White House Office complex which is on government property and belongs to the government.

1973 Dec. 18: General Accounting Office (GAO) issues a report on federal spending on Nixon's private residences (which it puts at $1.4 million) calling for tighter control (including limiting the number of president's private residences protected at public expense) and greater public disclosure on such expenditures in the future.

1973 Dec. 11 *White House Pressure on IRS Denounced.* Federal District Court Judge Charles Richey (in Washington) orders the Internal Revenue Service to grant tax-exempt status to the Center on Corporate Responsibility because of White House refusal to turn over to the court documents related to the appeal of the Center against an IRS decision to withhold tax-exempt status from the organization.

1973 Dec. 28 *Senate Watergate Tape Subpoena Ruling.* U. S. Court of Appeals (in Washington) orders Judge John J. Sirica to reconsider his Oct. 17 ruling denying the Senate Watergate committee access to 5 White House tapes and other materials in the light of new legislation granting the Sirica's court jurisdiction to enforce the committee's subpoena.

1974 Mar. 1 *7 Nixon Aides Indicted.* Federal Grand Jury indicts 7 former aides (including Mitchell, Haldeman, Ehrlichman) on charges (conspiracy, obstruction of justice and perjury) of covering up the Watergate scandal, the first such single indictment (in U.S. history) of so many close Presidential advisers. Subsequently, it is disclosed that the Grand Jury named President Nixon as an unindicted co-conspirator.

1974 Apr. 3 *President Nixon To Pay Back Taxes.* President Nixon announces that he will pay the full amount of back taxes requested by the IRS which has ruled that the President owed $432,787.13 plus interest.

1974 Apr. 5 *Chapin Convicted.* Former presidential appointments secretary Dwight Chapin is convicted by the Watergate special prosecutor.

1974 Apr. 28 *Mitchell and Stans Cleared in Vesco Affair.* New York jury finds former Attorney General John Mitchell and former Commerce Secretary Maurice Stans innocent of all charges that they impeded a Securities and Exchange Commission (SEC) fraud investigation of financier Robert Vesco in exchange for a secret $200,000 cash contribution to the Nixon reelection campaign fund.

1974 Jul. 12 *Ehrlichman Convicted.* Former presidential aide

1836

John Ehrlichman and 3 co-defendants are found guilty of conspiring to violate the civil rights of Daniel Ellsburg's psychiatrist (whose office was burgled on Sept. 3, 1971 by persons later connected with the Watergate breakin). The 4 convictions bring the total of guilty pleas and convictions in Watergate related matters to 37 (including former Attorney General Richard Kleindienst).

1974 Jul. 13 *Senate Watergate Committee Final Report.* Senate Watergate Committee releases a final report (concluding its 17-month investigation) which makes 35 recommendations for legislative change including "new institutions necessary to safeguard the electoral process, to provide the requisite checks against the abuse of executive power and to ensure the prompt and just enforcement of laws that already exist." The Committee's major recommendations include the creation of an independent public attorney to investigate and prosecute wrongdoing in the executive branch; the inclusion of all Justice Department officials, including the Attorney General, under the Hatch Act which forbids political campaign activity by Federal employees; the creation of an independent, nonpartisan Federal elections commission to enforce laws on campaign contributions and spending; the limiting of cash contributions and expenditures in Federal campaigns to no more than $100 and the limiting of individual contributions to $3,000 to a candidate in the Presidential primaries and the general election; and a prohibition against the solicitation or receipt of campaign contributions by government officials whose appointments were confirmed by the Senate or those on the payroll of the Executive Office of the President during such service and for up to one year thereafter.

1974 Jul. 24 *Supreme Court Rejects Unlimited Secrecy of Presidential Affairs.* Supreme Court upholds (8 to 0, Justice Rehnquist not participating) a District Court order to President Nixon to turn over 64 tapes of White House conversations requested (on Apr. 16) by Watergate Special Prosecutor Leon Jaworski. The Court concedes (in an opinion delivered by Chief Justice Warren Burger) that a constitutionally-based executive privilege of confidentiality of presidential conversations and papers exists, but declares that the courts are empowered to decide whether the exercise of the privilege is valid. The Court orders Nixon to turn over the tapes to District Court Judge John Sirica to determine which portions of the tapes bear upon the Watergate prosecution. *On the same day,* President Nixon (in a statement read on national television by White House Counsel James St. Clair) says that he is "disappointed" in the ruling but that he will "respect and accept the Court's decision."

1974 Jul. 30 *House Panel Completes Impeachment Bill.* House of Representatives Judiciary Committee completes and reports to the House a 3-article draft bill of impeachment against Richard Nixon accusing him of obstructing justice in the investigation of the Watergate breakin (adopted on Jul. 27 by a vote of 27 to 11), of persistent abuse of presidential authority (adopted on Jul. 29 by a vote of 28 to 10), and of unconstitutional defiance of the Committee's subpoenas (adopted on Jul. 30 by a vote of 21 to 17). The Committee rejects 2 proposed articles of impeachment accusing Nixon of unconstitutionally assuming the Congressional power to declare war by ordering the secret bombing of North Vietnamese and Vietcong bases in Cambodia and of misconduct in his underpayment of taxes.

1974 Aug. 5 *Nixon Admits Hiding Evidence and Limiting Initial FBI Investigation of the Watergate Affair.* President Nixon issues a statement in which he admits that he ordered a curb on the FBI inquiry of the Watergate breakin for political as well as national security reasons and that he kept the evidence from his lawyers and members of the House Judiciary Committee. The statement announces his decision to release 3 taped conversations he had with former presidential aide H. R. Haldeman (on Jun. 23, 1972), 6 days after the Watergate breakin, which show that he approved telling the FBI to limit its investigations to avoid exposing CIA operations, after learning that the FBI had traced money found on the burglars to Nixon's reelection campaign committee.

2. U.S. Foreign Affairs Chronology

1973 Nov. 7 *Presidential War Powers Limited.* House of Representatives and the Senate override President Nixon's Oct. 24 veto of legislation limiting the President's war-making powers.—"[Congress dealt] Nixon what appeared to be the worst legislative setback of his 5 years in office. . . . Earlier this year [1973] Congress forced a halt in the U.S. bombing in Cambodia . . . but until today both houses had never been able to muster a two-thirds vote to override Nixon's vetoes of measures dealing with the nation's involvement in combat abroad." (*NY Times,* 11-8-73)—"Supporters [of the law] said it is the first time in history that Congress has enacted a law spelling out the war powers of President and Congress. . . . The bill provides that when the President commits U.S. troops to hostilities abroad or 'substantially' enlarges the number of U.S. troops equipped for combat in a foreign nation, he must report to Congress within 48 hours the circumstances, authority and scope of the action. The key provisions state that the President must stop the operation after 60 days unless Congress approves his action, though he could continue for 30 more days if necessary to protect U. S. forces. It also provides that Congress can order the operation halted within that period by passing a concurrent resolution that would not be submitted to the President for possible veto." (*Washington Post,* 11-8-73)—"the War Powers Bill has been recognized as an important test of the President's authority over the Legislature at a time when the Watergate crisis has increased Congressional displeasure with his Administration."

On the same day: Egypt-U.S. Diplomatic Relations Resumed. Egypt and the U.S. announce (in Cairo following a meeting between Secretary of State Kissinger and Egyptian President Anwar Sadat) that the 2 countries have "agreed in principle to resume diplomatic relations at an early date" and that "in the meantime" Egypt and the U.S. will immediately raise their existing diplomatic relations to ambassadorial level.

1973 Nov. 13 *Two-Tier Gold Price Ended.* Central Bank Governors of Switzerland, Britain, West Germany, and the Netherlands, Belgium, Italy and the head of the U. S. Federal Reserve Board declare (in a joint communique issued in Washington) that they have abolished the 2-tier gold system (see *International Monetary Fund* 1968 Mar. 14 & indented date) and that they no longer will maintain any "official" price for gold.

1973 Nov. 16 *Kissinger 10-Country Tour Ends.* Secretary of State Kissinger ends a round of visits to Middle Eastern and Far Eastern countries (including his 6th visit to China during which he held talks with Chairman Mao Tse-tung).

1973 Nov. 19 *Resident Alien Employment Ruling.* Supreme Court rules (8-1) that employers may legally deny jobs to resident aliens.

1973 Dec. 4 *Foreign Exchange Market Intervention.* Federal Reserve Bank of New York Senior Vice President Charles A. Coombs announces that the Federal Reserve Bank sold (from early Aug. through late Oct., 1973) $247 million equivalent of West German marks and Dutch guilders.

On the same day: Greece-U.S. Relations. U.S. resumes full diplomatic relations with Greece's new army-backed government, which ousted the Papadopoulos regime.

1973 Dec. 10 *Nerve Gas. New York Times* (independent daily) reports that the Army plans to spend more than $200 million to produce a new type of nerve gas for the Army's 8-inch and 155-millimeter artillery pieces.

1973 Dec. 13-17 *Kissinger Visits Middle East, Portugal, Spain.* Secretary of State Kissinger makes a round of visits to Algeria,

1837

Egypt, Saudi Arabia, Jordan, Syria, Lebanon and Israel for talks preparatory to the Middle East peace conference beginning in Geneva on Dec. 21.

1973 Dec. 17: Kissinger visits Portugal.

1973 Dec. 19: Kissinger ends his visit to Spain. A joint communique (issued in Madrid) states that both Spain and the U. S. agreed "that Spain must participate on a basis of equality with other countries of the Atlantic area."

1973 Dec. 23 *Oil Price Increase.* Six Arab oil producing countries —Saudi Arabia, Iran, Iraq, Kuwait, Abu Dhabi and Qatar— announce (at a meeting in Teheran) that they have decided, effective Jan. 1, to raise the posted price of crude oil exports to $11.65 a barrel.

1973 Dec. 26 *Emergency Military Aid for Israel.* President Nixon signs a bill authorizing $2.2 billion in emergency military aid for Israel.

1974 Jan. 1 *Peru Nationalizes U.S.-Owned Mining Corporation.* Peruvian government formally nationalizes the U.S.-owned Cerro de Pasco Mining Corporation.

1974 Jan. 10 *New Missile Strategy.* Defense Secretary James Schlesinger (in a speech before the Overseas Writers Club) says that the U.S. has begun targeting some of its strategic missiles so that they could strike at Soviet military installations as well as cities.

1974 Jan. 19: Defense Department sends a quarterly report to Congress indicating (in a footnote) a $221 million increase in the cost of building a "maneuverable re-entry vehicle" (MARV) to be fitted on the new rockets which the Trident submarine will fire.

1974 Jan. 11 *Wheat.* Agriculture Department issues a report on export contracts held by private U.S. traders disclosing that the Soviet Union has agreed to a delay in the delivery of 18.4 million bushels (listed for shipment during the 1973–74 season) until after Jul. 1 (when the 1974 season begins). The export report notes that (as of Dec. 30, even after taking the delivery delay into consideration) U.S. exporters are committed to ship 38.7 million bushels of wheat to the Soviet Union by Jun. 30.

On same day: Jet Fighter Sales. Defense Department announces (in Washington) that Iran has agreed to buy 30 Grumman F-14 Tomcat jet fighters.

1974 Jan. 18 *U.S. Middle East Role—Egypt Links Restored.* Egypt and Israel sign (in a UN tent on the Cairo-Suez highway) military disengagement negotiated with U.S. assistance.

1974 Feb. 28: Egypt and the U. S. announce (in Cairo, during a visit by Secretary of State Kissinger) that they are resuming diplomatic relations immediately.

1974 Mar. 19: Defense Department announces that the U.S. has agreed, as part of the overall Middle East settlement, to help clear the Suez Canal of explosives and other debris accumulated over the past 6 years (since the Oct. 1967 war). Pentagon spokesman Jerry Friedheim says that the U. S. will spend "tens of millions" of dollars in the effort and that 500 U.S. military men are to be sent to Egypt to begin operations.

1974 Jan. 23 *First Oil Export Quotas.* Commerce Secretary Frederick B. Dent announces that (for the first time) the government is imposing export quotas on petroleum products, setting a 46,000 barrel-a-day limit.

On the same day: Kaiser Pact With the Soviet Union. Kaiser industries signs (in Moscow) a 5-year pact with the Soviet State Committee for Science and Technology for cooperation in aluminum and steel production, mining, cement making and the construction and modernization of port facilities.

On the same day: Development Aid Killed. House of Representatives rejects (by a vote of 248 to 155) a bill to authorize the appropriation of $1.5 billion for the replenishment of the International Development Agency (IDA) funds. Secretary of State Kissinger and Treasury Secretary Shultz issue a joint statement deploring the action as a "major setback" to U.S. ability to provide leadership in the Third World.

1974 Jan. 24 *Coastal Fisheries—Communist Trawlers Fined.* Manhattan Federal Court fines a Bulgarian trawler captain $20,000 after he pleads guilty to fishing illegally in U.S. coastal waters. Shortly after, the Bulgarian state corporation owning the trawler pays the U.S. $105,000 to settle the Federal Government's civil suit against the boat.

1974 Feb. 5: Coast Guard seizes a Russian trawler with 15 tons of shrimp off Alaska.

1974 Jan. 29 *Trade Surplus—Foreign Investment Curbs Ended.* Treasury Department announces that the Government is ending controls on dollar lending and investment abroad because of a 1973 improvement in the U. S. balance-of-trade and balance-of-payments situations.

1974 Jan. 30 *U.S. To Give Up Okinawa Bases.* U. S. agrees (at the Japan-U.S. Consultative Committee's 15th Meeting in Tokyo) to give up 5 Army and 2 Marine bases on Okinawa and to release 12 other bases, including the Naha port base. The agreement (which carries no timetable) covers the largest return of areas to Japan since Okinawa's reversion to Japanese rule.

1974 Jan. 30 *JCS Spying on President's Office.* Joint Chiefs of Staff Chairman Adm. Thomas H. Moorer acknowledges (in a Jan. 30 letter to the Senate Armed Services Committee) that in 1971 he knowingly received documents from the private files of White House national security advisers Henry Kissinger and Gen. Alexander Haig which were collected by a Navy clerk assigned to their staff. Moorer says that he did not order such military spying and he received no information on U. S. foreign policy that did not come through regular channels.

1974 Jan. 31 *Chinese Release U.S. Observer.* Former U. S. Army Captain Gerald Kosh, a U.S. observer in Vietnam, arrives at Clark Air Base (in the Philippines) after being released by the Chinese, who captured him during Chinese-South Vietnamese fighting in the Paracel Islands.

1974 Feb. 4 *Defense Budget.* President Nixon sends to Congress a budget providing for $86 billion for defense in 1974–75 ($6 billion more than in 1973–74).

1974 Feb. 5 *Britain and U.S. Agree to Expand Diego Garcia Base.* British Foreign Office Minister of State Julian Amery announces (in the House of Commons) that Britain and the U. S. have agreed in principle to expand and improve the naval air base on the British Island of Diego Garcia in order "to balance increased Soviet activities in the Indian Ocean."

1974 Feb. 6 *Soviet-U.S. Trade.* U. S. Embassy in Moscow released preliminary Commerce Department figures showing that Soviet-U.S. trade reached a record $1.4 billion in 1973 (compared to $642.3 million in 1972), with U.S. sales to the Soviet Union totaling $1.2 billion and Soviet sales to the U.S. totaling $214 million.

1974 Feb. 7 *New Panama Canal Treaty Terms Set.* Panama Foreign Minister Juan Antonio Tack and Secretary of State Henry Kissinger sign (in Panama) a "statement of principles" setting out guidelines for a new Panama Canal Treaty that will eventually return the canal to Panama.

1974 Feb. 8 *Skylab III Splashdown.* Skylab III astronauts Gerald Carr, William Pogue and Edward Gibson splash down in the Pacific Ocean after an 84-day mission (the longest space voyage in history and the last in this series).

1974 Feb. 11–13 *Oil Consumers Conference.* Thirteen oil-consuming countries meet in Washington, in response to President Nixon's invitation, to discuss the energy crisis. Secretary of State Henry Kissinger proposes (in an opening address) 7 areas for cooperation, termed "Project Interdependence." On Feb. 13, the conference issues a communique agreeing to establish a coordinating group to prepare for a conference of oil-producing and consuming nations. France refuses to sign 3 communique articles.

1974 Feb. 18 *Currency Swap With Italy Raised.* IMF Survey reports that the Federal Reserve Board has raised from $2 to $3 billion the currency swap arrangement with Italy. *On the same day: India's Rupee Debt Written Off.* India and the U.S. sign (in Delhi) an agreement disposing of India's $3 billion

1838

rupee debt through $2 billion U. S. grant and reservation of $1 billion in rupees for running U.S. diplomatic missions in India.

1974 Feb. 21 *Inter-American Conference.* Organization of American States (OAS) foreign ministers begin meeting (in Mexico City) in response to an Oct. U. S. Invitation to open a "new dialogue." Secretary of State Henry Kissinger proposes setting up machinery to help solve Latin-U.S. disputes and pledges a renewed U.S. political commitment to a Western Hemisphere system. On Feb. 24, the conference issues the Declaration of Tlatelolco establishing an informal framework for continuing high-level discussions.

1974 Mar. 4 *U.S. Protests Against Common Market Offer to Arabs.* European Common Market foreign ministers announce (in Brussels) an offer of broad economic cooperation with Arab countries. On March 7, Secretary of State Kissinger says (in testimony to the Senate Finance Committee) that the U.S. may have to reconsider its troop levels in Europe unless the Common Market countries abandon their "ego policies" and cooperate more closely with the U.S. on political and economic policies. On March 15, President Nixon (in a televised Chicago speech) reiterates Kissinger's warning.

1974 Mar. 11 *Soviet Credits Halted.* Export-Import Bank halts the processing of all new loans and credit guarantees to the Soviet Union, Poland, Rumania and Yugoslavia after a GAO report is made public (Mar. 8) saying that $255 million worth of Ex-Im Bank credits to the Soviet Union were illegal.

1974 Mar. 22: Ex-Im Bank announces that it is resuming lending to the Soviet Union and 3 other Communist countries following Attorney General William B. Saxbe's notification (Mar. 21) to President Nixon that the loans were legal.

1974 Mar. 18 *Arabs End U.S. Oil Embargo.* Abu Dhabi, Algeria, Bahrein, Egypt, Kuwait, Qatar and Saudi Arabia announce (in Vienna) that they are lifting the embargo on oil shipments to the U.S.

1974 Mar. 26: Wall Street Journal (independent New York daily) reports that the Saudi Arabian government has advised the Arabian American Oil Company (Aramco) to increase production to 1 million barrels a day (bringing Aramco's production back to the Sept. 1973 level).

1974 Mar. 21 *Sweden and U.S. To Resume Ties.* President Nixon agrees to resume normal diplomatic relations with Sweden and announces that he will nominate as ambassador Robert Strausz-Hupe (currently Ambassador to Belgium).

1974 Mar. 24 *Kissinger-Soviet Talks.* Secretary of State Henry Kissinger arrives in Moscow for 3-day talks with Soviet Communist Party Leader Leonid Brezhnev and other Soviet leaders. On March 28, Kissinger says (at a London press conference) that a "conceptual breakthrough" in the strategic arms limitation talks (SALT) with the Russians is proving elusive.

1974 Apr. 5 *Closer Saudi-U.S. Ties.* Saudi Arabia and the U.S. announce (in Riyadh and Washington) that the 2 countries have agreed to strengthen economic, industrial and military cooperation.

1974 Apr. 14: Riyadh radio reports that Saudi Arabia and the U. S. have signed a $335 million agreement under which the U. S. will re-equip and train Saudi Arabia's National Guard.

1974 June 7: Saudi Arabia and the U.S. sign (in Washington during a visit by Prince Fahd Ibn Abdul Aziz al Saud) an agreement establishing a "special relationship" between the 2 countries and setting up a joint economic cooperation commission and a joint security cooperation commission.

1974 Apr. 15 *Kissinger Address on Raw Materials.* Secretary of State Henry Kissinger says (in an address to the UN General Assembly special session on raw materials and development) that the U.S. is ready to join other governments in building up world food reserves, it will help developing nations increase their agricultural production, and it will try to increase food aid to foreign countries. Kissinger also proposes establishing a global agency to forecast shortages and surpluses in raw materials.

1974 Apr. 18 *U.S. Subsidiaries Abroad to Sell to Cuba.* U.S. lifts its ban on the sale of cars and trucks to Cuba by 3 Argentina-based U.S. firms (General Motors, Ford and Chrysler).

1974 Apr. 26: MLW Worthington, Ltd. (a Montreal-based subsidiary of the U.S. company Studebaker-Worthington) concludes a $20 million agreement with Cuba for the sale of 25 locomotives.

1974 Apr. 24 *Foreign Aid.* President Nixon sends to Congress a request for $5.18 billion in foreign aid, including $900 million for the Middle East ($250 million for Egypt, $207 million for Jordan and $350 million for Israel) and $940 million for Indochina.

1974 Apr. 29 *U.S. Ratifies "Ocean Dumping Convention."* U.S. ratifies the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (negotiated in London in 1972), becoming the 6th country to ratify.

1974 May 3 *Soviet Gold to U.S. Globe and Mail* (independent Toronto daily) reports that the Soviet Union has become the U.S.'s biggest supplier of refined gold bullion, outstripping Canada and Switzerland with 351,368 oz. (valued at $45,988,000) in the first 3 months of 1974.

1974 May 14 *New Joint Chiefs Head.* President Nixon names Air Force General George S. Brown Chairman of the Joint Chiefs of Staff, to succeed Admiral Thomas Moorer (whose term expires in July).

1974 May 21 *U.S. Loans to Soviets.* Export-Import Bank grants a $180 million loan to the Soviet Union to help finance construction of a $2 billion fertilizer complex in the Togliatti-Kuibyshev area.

1974 June 21: Soviet Union and the Chemical Construction Corporation (Chemico, a General Tire and Rubber Company division) sign, in Moscow, a $200 million contract to construct 4 ammonia plants on the Volga River. (It is the first of the contracts to be awarded under the Occidential Petroleum deal and the largest single Soviet contract with a U.S. company.)

1974 May 23 *U.S. Pledges Not to Develop "Mininukes."* U.S. says (in a statement at the close of the Geneva disarmament conference's spring session) that it will not develop a new generation of miniaturized nuclear weapons that could be used interchangeably with conventional weapons on a battlefield.

1974 May 31 *U.S. Middle East Role.* Syria and Israel sign (in Geneva) a troops disengagement agreement on their mutual front in the Golan Heights. The agreement involves an informal understanding (made public by Israeli Premier Golda Meir on May 30) that the U.S. will condone and support anti-guerrilla actions taken by Israel in self-defense. In another unpublished part of the agreement, the U. S. undertakes to conduct reconnaissance flights in the Golan Heights.

1974 June 3 *U.S. Withdraws from Laos.* U. S. withdraws the last of its military men from Laos, in compliance with the 1973 ceasefire agreement.

1974 June 4 *Soviet-Boeing Agreement.* Soviet Union and the Boeing aircraft company sign (in Moscow) an agreement covering the joint design and development of a new passenger plane and possible construction of a Boeing plant in the Soviet Union.

1974 June 10 *U.S. Share of World Exports Up. Commerce Today* (Commerce Department bi-weekly) reports that U.S. exports of manufactured goods increased almost one-third in 1973 to reach $45.5 billion (the first annual increase since 1968 and the fastest expansion in more than a decade). *Commerce Today* says the rise is due in part to major currency realignments of the past few years.

1974 June 10–19 *Nixon Middle East Tour.* President Nixon makes a 10-day trip to 5 Middle East countries (Egypt, Saudi

1835

Arabia, Syria, Israel and Jordan). Nixon is accompanied by Secretary of State Kissinger.

1974 June 12–14: President Nixon visits Egypt (the first U.S. President to do so since 1943). On June 14, Egyptian President Anwar Sadat and President Nixon sign a joint declaration of principles of cooperation providing for the U. S. to sell nuclear reactors and nuclear fuel to Egypt.

1974 June 16: President Nixon arrives in Syria (the first U.S. President ever to visit). The same day, Syrian President Hafez al-Assad and President Nixon announce that their 2 countries will resume diplomatic relations, broken off in 1967.

1974 June 17: President Nixon ends a 2-day visit to Israel. The 2 countries issue a joint statement pledging continued U.S. economic and military support for Israel and announcing that they will soon negotiate a nuclear cooperation agreement.

1974 June 18: President Nixon ends a day's talks with Jordanian King Hussein. The 2 countries announce that they are creating a joint Jordanian-U.S. commission to review regularly areas of cooperation (economic development, trade, military assistance and scientific, social and cultural relations).

1974 June 20: President Nixon (in Washington) briefs Congressional leaders on his Middle East trip and assures them that he has reached no secret agreements or understandings with Arab or Israeli leaders.

1974 June 14 *U.S. Arms Negotiator Quits.* Chief U.S. negotiator at the strategic arms limitation talks (SALT) Paul Nitze resigns, saying that because of Watergate President Nixon is no longer able to negotiate effectively with the Russians.

1974 June 20: Nitze says (in testimony before the Senate Armed Services Committee) that as part of the 1972 Soviet-U.S. agreement on offensive nuclear missile launchers, the U.S. secretly agreed to permit the Russians to put modern missile launchers into old submarines and thereby exceed the specified limit. Subsequently, press reports state that in the 1972 agreement the U.S. made a second secret concession in assuring the Soviet Union that it did not intend to build the maximum number of missile launchers permitted.

1974 June 19 *NATO Declaration.* North Atlantic Treaty Organization (NATO) foreign ministers, meeting in Ottawa, approve a "declaration of principles" under which the U.S. promises to consult closely with its NATO allies on progress toward a Middle East settlement.

1974 June 27–July 1 *Nixon Soviet Trip.* President Nixon and Soviet President Leonid Brezhnev hold summit talks in the Soviet Union.

1974 June 28: Brezhnev and Nixon sign 3 technical cooperation agreements covering energy, housing construction and development of an artificial heart.

1974 June 29: The two leaders sign a 10-year trade agreement.

1974 July 3: Presidents Brezhnev and Nixon sign (in Oreanda, a Yalta suburb) a 5-year agreement on limiting strategic nuclear arms (SALT III) to take effect March 31, 1976. The agreement provides for: limiting to 150 kilotons underground nuclear explosions; reducing to one apiece antiballistic missile (ABM) sites; and negotiations to be undertaken to prevent environmental warfare. The 2 leaders agree also to negotiate a permanent 10-year offensive missile agreement. They announce (in a joint statement) that they have agreed to open consulates in Kiev and New York.

1974 July 1 *New Navy Chief.* Adm. James L. Holloway, 3rd takes over from Adm. Elmo R. Zumwalt, Jr., as head of the Navy.

1974 July 5 *Turkish Opium Ban Lifting Protested.* U.S. recalls Ambassador to Turkey William B. Macomber, Jr., in protest against Turkey's decision to lift its ban on opium poppy growing.

1974 July 11: Senate votes (81–8) to cut off economic and military aid to Turkey unless the Turkish government tightens by Jan. 1, 1975 safeguards to prevent diversion of opium into criminal channels.

On the same day: Czech-U.S. Claims Agreement. Czechoslovakia and the U.S. agree (in Prague) on settling financial counterclaims dating from the end of World War II.

1974 July 8 *Import Surcharge Invalid.* U. S. customs court (in New York) rules that President Nixon exceeded his authority in imposing a 10% surcharge on all imports and orders the Customs Bureau to refund all money collected during the 4-month duration of the tax.

1974 July 9 *Spanish Pact.* Secretary of State Henry Kissinger (in Madrid at the end of a 6-nation European tour to brief U.S. allies on the Soviet-U.S. summit talks) signs a Spanish-U.S. "declaration of principles" providing for economic, political and military cooperation.

1974 July 11 *U.S. Agrees to 200-mile Coastal "Economic Zone."* U.S. agrees (at a UN conference on the law of the sea in Caracas) to abandon its 3-mile territorial waters limit for a 12-mile worldwide territorial waters limit and an "economic zone" extending to 200 miles.

1974 July 16 *Egypt to Permit 4 U.S. Banks to Open.* Egyptian Deputy Prime Minister Abdel Aziz Hegazzi and Treasury Secretary William E. Simon announce (at a Cairo press conference) that Egypt is issuing operating permits to 4 U.S. banks (Bank of America, First National City Bank, Chase Manhattan and American Express).

1974 July 20 *Police Equipment to Soviet Union Banned.* Administration decides to ban the exhibition and sale of sophisticated police equipment in the Soviet Union following Congressional protest that it could be used against dissidents and Jews.

On the same day: Cyprus Crisis. Turkish forces invade Cyprus after Archbishop Makarios is deposed (July 15) as president by Greek officers in the Cypriote National Guard. Subsequently, the U.S. temporarily suspends military aid to Greece.

1974 Aug. 14: Turkey renews its military action in Cyprus after the breakdown of tripartite talks between Greece, Turkey and Britain on the status of the Island. The drive ends with the Turkish occupation of the northern third of Cyprus.

1974 Aug. 18: Defense Secretary James Schlesinger warns (on national television) that Turkey risks a suspension of U.S. arms shipments if it continues to advance militarily in Cyprus.

1974 Aug. 19: Demonstrators led by Greek Cypriote military men attack the U.S. embassy in Nicosia and shoot Ambassador Rodger P. Davies killing him and wounding several other embassy people.

1974 July 24 *Chile Compensates Anaconda.* Anaconda Company announces (in New York) that Chile and Anaconda have reached a settlement under which Chile will pay approximately $65 million in cash and $188 million in promissory notes, in compensation for Chile's 1971 expropriation of Anaconda subsidiaries Chile Exploration and Andes Copper Mining.

1974 July 29 *Senate Report on Soviet Wheat Deal. Guardian* (independent Manchester daily) reports that a Senate subcommittee headed by Senator Henry Jackson has issued a report of its inquiry into the 1972 U.S. wheat sale to the Soviet Union.

1974 July 30 *Arms Budget.* Senate passes (88–8) and sends to President Nixon a compromise $22.2 billion arms procurement budget for Fiscal 1975.

1890

Appendix N:
Congress and National Security

PREVIOUS PAGE BLANK

Introduction

Appendix N, "Congress and National Security," presents three papers prepared for the Commission reflective of the present concern with national security. Congressman Clement J. Zablocki, a member of the Commission, raises in his paper the central issues shaping the organization of Congress in this matter. A related, persistent concern of Congress is discussed in Senator Stuart Symington's paper on Congress and nuclear weapons. Both papers reflect a renewed interest in the making of national security policy, and for a greater public openness.

A third paper reproduces the extensive reply of the Department of Defense to a comprehensive set of questions put to the Department of Defense by Senator Mansfield, a member of the Commission, relating to defense policy and proposed expenditures.

PREVIOUS PAGE BLANK

184

Contents

Introduction 205

CONGRESS AND NATIONAL SECURITY: A LOOK AT SOME ISSUES 207
by Representative Clement J. Zablocki

FOREIGN POLICY AND UNNECESSARY NUCLEAR SECRECY—THE NEED FOR MORE COORDINATION AMONG THE COMMITTEES INVOLVED 210
by Senator Stuart Symington

DEPARTMENT OF DEFENSE RESPONSE TO SENATOR MIKE MANSFIELD: INFORMATION FOR CONSIDERATION BY THE COMMISSION 215

Annex A: Duties and Functions of Military Advisors and Military Assistance Programs 271

Annex B: Senator Mansfield's letter to Secretary of Defense Schlesinger requesting answers to 111 questions 273

1843

Congress and National Security: A Look At Some Issues

Representative Clement J. Zablocki
April 1974

In the present context, the subject of Congress and national security revolves around two basic questions:

First—Does the Congress as presently organized and operated adequately meet its Constitutionally-mandated responsibilities in the area of national security?

And the second question is—if Congress has shortcomings in this area, how can they best be remedied?

As a starting point for answering the first question, we must refer back to the Constitution. That remarkable document clearly gives the Congress broad and significant powers over national security.

Article I, Section 8, of the Constitution gives Congress the responsibility of raising and supporting armies, of providing and maintaining a navy, and of providing for the use of militia.

Congress also is charged with making rules for the government and regulation of those land and naval forces.

Under the Constitution, Congress is to make rules on captures on land and waters.

And perhaps most important of all, it is Congress which is to declare war.

Article I, Section 9, of the Constitution which bestows upon Congress the so-called "power of the purse" also must be seen as a grant of important responsibility for national security affairs.

Against the very impressive mandate to Congress in national security affairs we can match the powers of the President. They are to be found in Article I, Section 2, in which it specifies that the Chief Executive is to be "commander in chief." Many nuances and opportunities have been read into that one phrase—commander-in-chief—by a succession of American Presidents. As a result, tension has been created between the legislative and executive branches of our government concerning primacy over national security issues. Although we are accustomed to thinking about that tension in contemporary terms, we should be aware that the basic conflict dates from the beginning of the Republic.

A war powers study now underway at Columbia University Law School, sponsored by the American Bar Association, is giving us renewed appreciation that from the very beginning of our nation—in the presidencies of George Washington and John Adams—the Congress and the President often were locked in struggles over their proper roles and responsibilities for national security and defense.

Since those early times several factors have intensified and magnified the problem.

First, the sheer size of the Executive Branch acts against the interests of Congress. Today we are faced with an independent bureaucracy whose authority extends to every function of government—and in a particular way to national security.

How is Congress-faced with a bureaucracy of millions—adequately to prevent its will from being thwarted by the actions of individual federal officials?

A second factor is the nature of modern warfare. The sobering responsibilities involved in weapons of mass destruction which so rapidly can be sent on their way—or sent our way by adversaries—seem to require the kind of quick decision-making and action which the Congress by its very nature is incapable of accomplishing.

Thus the Presidency, in which lodges the power of nuclear decision-making, has come to be seen as the arbiter of all national security questions. We in Congress almost always have deferred to the President on matters of grave national importance so long as he presented them in the context of "national security."

A third factor which complicates executive-legislative relationships on national security affairs is the requirement for confidentiality and secrecy.

If members of Congress are to make truly re-

1844

sponsible decisions concerning the expenditures of billions of dollars annually for defense and security, they must have adequate information upon which to base conclusions. Yet needed information is often withheld from Congress on the grounds that its disclosure, inadvertant or purposely "leaked," would severely harm the national interest. Today, a new situation is taking shape. The war in Indochina has badly damaged the national consensus on America's role in the worl ' Increasingly constituents expect individual members of Congress to be part of the decision-making process on security issues. And finally, we are faced with a Watergate-weakened President who lacks full credibility with the Congress and the nation at large.

In the light of these circumstances, the Congress has acted with vigor and decision in several instances:

It has enacted legislation which, in effect, precludes the executive branch from making agreements with other nations which then are kept secret from the Congress or the appropriate committees of Congress.

Congress also has enacted a war powers bill, over a Presidential veto, which is intended to restore to it the authority over war and peace which the Founding Fathers intended it to have.

Finally, Congress voted to cut off the bombing in Cambodia, despite warnings by the President that its action would result in the abandonment of that country to a quick take-over by the Communists. (That was more than 8 months ago.)

Three such actions, however, do not necessarily mean a Congressional resurgence in national security policy. Even if changed political conditions instill in Congress a will to reassert its powers, our own organizational system may be an obstacle to real effectiveness.

For too long responsibilities for issues of national security have been unduly fragmented among Congressional committees. As a member of the Committee on Foreign Affairs, for example, I have believed that expertise from that committee should be brought to bear in oversight of the Central Intelligence Agency and other U.S. intelligence instruments.

For that reason I sponsored for many years legislation which would have created a joint committee on intelligence, similar to the Joint Committee on Atomic Energy.

Although the proposal had wide public and media support, as well as support in Congress, it was repeatedly thwarted by the efforts of members who were themselves assigned to oversee the CIA, and who allied themselves with the Agency against the creation of a new oversight committee. There was, and perhaps still is, more trust by some congressmen in the Agency they are to scrutinize than of their own colleagues in Congress.

If the Select Committee on Committees' reforms are adopted, Congress will have made some modest progress toward ending undue committee fragmentation of national security issues.

The reforms would give the Committee on Foreign Affairs oversight responsibilities for intelligence activities. In a reciprocal way, it would give the House Armed Services Committee oversight for arms control and disarmament activities.

Nevertheless I continue to believe that a Joint Congressional Committee on Intelligence could be an even more effective check on the activities of our intelligence-gathering agencies.

Certainly, it is a proposal I would enjoy hearing debated this morning by our panel.

As a result of my work on the war powers legislation, I have also come to favor the creation of a Joint Congressional Committee on National Security.

This new Joint Committee would be analogous to the Joint Committee on Economic Policy, created in 1946. Such a Joint Committee should draw its members from the leadership of both Houses, and from the Senate Foreign Relations Committee, the House Foreign Affairs Committee, the Senate and House Armed Services Committees and the Appropriations Committees of each House.

This Joint Congressional Committee, serving with the combined prestige of both Houses, would be charged with the task of constantly examining U.S. foreign and security policy objectives and the means being used to achieve those objectives.

It would act as a central point of focus for Executive Branch attention and information on international developments. For example, such a committee could be designated by Congress to be the recipient of, and depository for, the reports which are now required under the War Powers Act when the President undertakes certain kinds of action involving American armed forces.

The proposed Committee would not usurp any of the legislative functions of existing committees, but rather serve as an independent source of judgment as well as an aid to the Executive Branch in considering foreign policy objectives, priorities and instrumentalities.

The Administration has indicated that it would favor such a joint committee because it would simplify, and permit more efficient exercise of, its relationships with Congress. The idea also has been endorsed by the panel of the United Nations Association of the United States, headed by Arthur Goldberg. Several bills now pending in Congress make a similar proposal.

Since the gentlemen sitting on this panel today would all be logical candidates for membership on such a joint committee, I would be interested in having their views.

There are a number of other issues which might well be addressed during these discussions:

1845

Should Congress continue to allow itself to be bound by a system of information classification which originates in the Executive Branch, or should it legislate a new system of classification?

Second, should Congress insist that the CIA national estimates be made available to designated committees of Congress upon demand, just as they are now available elsewhere in the Executive Branch?

Third, should Congress have the right to veto national commitments which are made by Presidents through executive agreements with foreign nations just as it can now veto executive branch reorganization plans?

Fourth, should Congress establish a mechanism which permits it to examine and possibly challenge Presidential assertions of privilege on national security and other issues?

Although time will not permit us to obtain full answers for all those questions, I would hope that each of our distinguished panelists today would express himself on the two basic questions with which I began this presentation:

Is Congress doing its full job in the area of national security affairs?

And, if not, how can it improve?

Gentlemen, we await your thoughtful answers....

1846

Foreign Policy and Unnecessary Nuclear Secrecy—The Need for More Coordination Among the Committees Involved

Senator Stuart Symington
June 1974

Nearly all of this statement was written for this Commission before the United States agreed to supply Egypt with a nuclear capacity. Clearly this surprising development makes these remarks even more timely.

On August 6, 1945, the United States dropped a fission nuclear bomb on the town of Hiroshima. The lethal strength of that bomb was 13 kilotons, i.e., 13,000 tons of TNT. Its weight was 10,000 pounds, all that could be pressed into the bomb bay of our then largest bomber, a B-29.

Today anyone in this room could bring in here a bomb of comparable lethal strength hidden in a moderate sized suitcase.

As additional evidence of the incredible development of this new force, consider that all tonnage dropped on Europe and Japan in the some four and a half years needed for victory in World War II was but 1/25th of one percent of what the United States has ready to drop tomorrow against a possible enemy.

One could ask at this point, "What has this to do with our diplomatic-military relationships?"

The answer is—everything. As the only member, for many years, of the Senate Armed Services, Foreign Relations, and Joint Atomic Energy Committees, let me assure this Commission that all the unnecessary secrecy which continues to surround details of this "new force" already has cost the American Taxpayer tens of billions of unnecessary dollars; and has actually reduced to a farce much of United States diplomatic and military relationships with other countries.

If many years ago the American people had been given truth about this subject, facts which could in no way affect our security, there would be major changes in our relationships with many other countries; and as mentioned, many billions could have been put to better use, all over the world.

Those of us who both honor and respect the military nevertheless know that when they are allowed to lead in diplomatic policy, they invariably follow tradition as against modernity, especially if their side won the previous war.

As but one illustration: Shortly after World War I, a young French lieutenant wrote a book predicting the nature of future war. He sold some 600 copies in France; but Hitler made his book required reading for every officer in the German Army.

The theory of this book was the blitzkrieg, so successful at the beginning of World War II; and the name of the young French lieutenant was Charles DeGaulle.

DeGaulle's predictions turned out to be only too true. They revolutionized warfare. But the impact of his prophetic thinking was as nothing compared to the changes which will result from the use of nuclear power in future war.

When I first came to the Senate and Armed Services Committee in 1953, fairly fresh from the Pentagon, I had been greatly impressed with the potential of nuclear weapons; but was told by the Chairman of the Committee at that time that the matter was really too secret to be discussed at all in the Armed Services Committee.

In other words, the primary and decisive military force that had just been released to the world was not to be considered in any detail in the Committee responsible for reviewing and authorizing military requirements.

1847

Unfortunately much of that apprehension remains to this day. But at least this year the Senate Armed Services Committee did adopt an amendment with respect to Europe as proposed by Senator Nunn, directing the Secretary of Defense to study (1) the overall concept for the use of tactical nuclear weapons in Europe; (2) how the use of such weapons relates to deterrence and a strong conventional defense; and (3) possible reductions in the number and type of nuclear warheads not essential for defense of NATO; and let me emphasize Europe is only part of the problem.

If approved by the House, the study will be reported to the Armed Services Committees of both Houses on or before April 1, 1975. In addition, beginning on September 1, 1974, the Secretary of Defense shall report twice a year to those same Committees on the number, type and purpose of United States tactical nuclear warheads located in Europe.

This proposal was adopted by the Senate after also accepting a proposal by Senators Muskie and Case that the same report likewise be transmitted to the Senate Foreign Relations and House Foreign Affairs Committees.

This is a step forward and I would hope that this is just the beginning of an effort to understand this new force.

In the Foreign Relations Committee it has been different. That Committee, after examining many United States nuclear bases and installations in foreign countries, requested a lot more nuclear information; but this Administration asserted that under the law they were forbidden to give out any pertinent information about nuclear weapons to any Committee but the Joint Atomic Energy Committee.

There was disagreement between the lawyers on the Committee and the lawyers of the Administration. In this case, the Committee finally did get partial information, but not enough on which to base any final judgment.

Because of the obvious great and growing importance of all forms of nuclear weapons, in order to get adequate information some years ago I gave up my position on another committee to join the Joint Atomic Energy Committee. By law, the Atomic Energy Commission must not only answer all questions of that Committee, but must volunteer any pertinent new information on nuclear subjects, military or otherwise.

Let me say that in my recent efforts to obtain such information I have had the full support of both the present chairman, Congressman Price, and the former and next chairman, Senator Pastore. The position of chairman alternates every two years between the two Houses.

Now let us look briefly at what we are talking about from the standpoint of true national security.

As mentioned, the Hiroshima bomb, the first ever used by mankind, had a strength of 13 kilotons. Dr. Herbert York, former Director of Research and Engineering in the Pentagon, recently testified that this bomb killed 100,000 people.

We know that in the four and a half years it took to beat both Germany, and Japan and the Islands, we dropped 2,046,000 tons of TNT; 1.4 million on Germany, 646,000 on Japan and the Islands. Let me repeat: in TNT equivalent, that force is 1/25th of 1 percent of what we have ready to drop tomorrow.

Another possibility: a man or woman could take a suite in a hotel in Washington, tell the manager he was going to his daughter's graduation in a nearby city, ask that his rooms not be entered during his short absence. Instead, he would then enplane at Dulles; and 12 hours later, when in Europe or elsewhere, there would be no more Washington.

We know also, of course, as does the Soviet Union, that one little U. S. fighter plane out of Frankfurt could drop 700 kilotons on Moscow, over 50 times the lethal effect of the Hiroshima bomb.

One might knock out 80 percent—never done in any previous air war—of any attacking force; but no one will ever knock out 99 percent of a carefully planned attack; and to save the city in question 100 percent of all the planes would have to be destroyed.

According to previously published testimony, the United States now has over 7,000 nuclear warheads in Europe alone, plus thousands of additional such warheads in other foreign countries all over the world, and on our surface ships, and in our submarines.

Even though a member of the Joint Committee on Atomic Energy, actually I am Chairman of the Military Applications Subcommittee of said Committee—I still have not been able to find out whether there is an actually signed agreement with the Germans which will allow us, in case of war, to use the nuclear weapons we have on their territory as we see fit. Example: what would be considered a tactical nuclear war to *us* could well be a strategic war to them.

Nor do we now have definite rules in other countries with less stable governments, countries where we also have many of these nuclear weapons.

We do know, however, that in the past we have handled their custody quite carelessly, not only in Europe, but in other countries. Senator Pastore is one of the experts on that aspect of this new force problem.

The importance of these facts can be realized when we recognize that just one of these many thousands of nuclear warheads could start a third war; and that war could be the end of all civilization as we know it.

1848

The former public servant now generally considered to be our leading elder statesman told me recently that some ten years ago a Soviet leader said to him, "You know we can now destroy your country, regardless of what you do, and we know you can destroy ours, regardless of what we do. So why can't we work out a fair arms control agreement?"

That would appear a logical question, offered some ten years ago. But where is there any such agreement today?

Consider the fact that if the Soviets hit the United States tonight with everything they have and we did not know they were coming, within forty-eight hours we would wipe their cities off the face of the earth, primarily because of the tremendous destructive capacity of the POLARIS-POSEIDON submarines.

On the other hand, if the United States hit the Soviet Union tonight with everything we have, and they didn't know *we* were coming, within 48 hours the minimum figure given the Joint Committee of the number of estimated American dead is 100 million.

Surely, therefore, every American has the right to receive more facts; the right to ask where there is possibility for any true victory for *either* side?

Less secrecy, more knowledge in this field, would have a major effect on the construction of the current military budget, where close to $100 billion is now being requested, far more than asked for when the Vietnam war was going on. It would help clarify, simplify and bring into better focus various problems discussed during recent Senate debate on military authorization. It would save the taxpayers many billions of dollars.

Accordingly, every citizen has the right to ask why the United States continues to maintain so much unwarranted secrecy around this nuclear force picture? Since the Smythe report came out back in the in the middle 1940s there has been no need for any such amount of secrecy.

I was in Japan in 1972, and talked to the man most people felt would be the next premier. We soon found from his penetrating questions that he had probably forgotten more about nuclear matters than we knew.

The Japanese are extremely interested in this subject. They have no oil or coal. They are bright and industrially developed. Our position with them has recently deteriorated sharply. Anyone who doubts that statement should read the "Letter from Tokyo" in a recent New Yorker Magazine article by Robert Shaplen, the reporter who did so much to open our eyes about Vietnam.

As we now all know, but a few weeks ago India became the sixth nuclear nation. It is my own opinion that at least two additional countries now have that capacity. That would make eight in the club; and we are now offering the potential to Egypt, as we already have to Pakistan.

One of our great scientists said years ago that, from a nuclear standpoint, the position of ourselves vis-a-vis the Soviet Union could be compared to two scorpions in a bottle.

Now there are at least six scorpions. What difference might it make in the future if two scorpions out of say ten or twenty make some decision? What effect would that necessarily have on the remaining scorpions, as the number of nations capable of possessing nuclear weapons continues to steadily grow?

There are additional dangerous possibilities, perhaps best pointed out by Dr. Ted Taylor. After reading some of his thinking, I called an experienced scientist in this field, one who heads a government laboratory, and asked if Taylor was a nut. He replied, "A nut? He designed most of our first fission bombs."

Dr. Taylor presents, among other points worthy of thoughtful consideration, the growing nuclear danger that could come from various private organizations intent on destruction—The Irish Republican Army, the Palestinian Liberation Front, any organized criminal group—any or all of them could be using this new nuclear force in the fairly near future.

This possibility becomes a steadily more practical problem as our peacetime nuclear energy efforts automatically require the use of enriched uranium, and within the residual waste which is always a result, there is much of that most poisonous of all man-made radioactive substances—plutonium.

On May 30, 1974, at a hearing of the Military Appropriations Subcommittee of the Senate Appropriations Committee, I presented some of these observations and then asked a question or two of the witness, Dr. Paul Warnke, former Assistant Secretary of Defense, a recognized civilian authority in the defense field.

I asked what he thought we should do about this onrushing new force. If we were going to be practical about what should be done diplomatically and militarily for the future security of the United States, regardless of all our conventional troops and ships and planes currently located all over the world, should we not take steps to eliminate the veil of secrecy which prevents our people from knowing facts that could not help a possible enemy, about this new and decisive military strength—nuclear strength?

Dr. Warnke replied: "I feel, Senator Symington, just as you do, that there is unnecessary secrecy about this at the present time and it does not serve any constructive purpose. We are not keeping anything at this stage from the Soviet Union. They

1849

know as much as we do about the destructive power of nuclear weapons.

"I think it is important that we maintain secrecy with regard to our advanced technology in this and other fields, but that is a very different question than the determination as to whether or not we and the rest of the world ought to appreciate the enormity of this power that the mind of man has unleashed.

"I think if we were to publicize this more, it would have a sobering effect. I think people would recognize the fact that the world can no longer afford war; any sort of conflict, whatever the motivation may be, holds the key to escalation into a nuclear confrontation.

"Senator Young said earlier today that if we look back at the wars we have fought, they have been conventional. I suspect that will always be the case. We won't look back to a nuclear war. There won't be anybody to look back. The destructive power even of those 7,000 so-called tactical nuclear weapons in Europe is such that Europe could not survive their use in the defense of Europe. It would be an instance in which we had to destroy Europe in order to defend it.

"I think there is an inadequate understanding of the fact that not only do wars now pose the problem of escalation to a nuclear conflict, but that it also means that we have to reevaluate the approach to war. At one time it was regarded as merely being a continuation of foreign policy by other means. It can no longer be regarded in that vein.

"I think it is terribly important that both we and other countries in the world recognize that in fooling around with the atom and with the proliferation which now appears to be the trend, that we create the ultimate risk not only to national security, but to world survival."

That was Dr. Warnke's reply.

In 1954, in the Cabinet Room in the House of Parliament, Prime Minister Churchill told Senator Styles Bridges and myself that, in effect, future nuclear technical development made England defenseless "from a sudden sharp attack from the sea."

In thinking about that profound statement, I went back to my boyhood. Between school terms, in the summer of 1914, in the Swiss village of Chexbres, located between Lausanne and Vevey, my mother and I went down into the village square to hear, after much beating of the drums by the town crier, that Austria and Russia had declared war; and that other major countries would follow.

The Swiss were worried, but not frightened. They felt they could inundate their valleys, take to their mountains, and successfully repel any attack.

Thirty-two years later, sitting on a boat on Lake Geneva, I watched a late model French fighter plane of World War II flash across the Lake and disappear over the Swiss Alps; and suddenly realized that the isolation which had been the greatest defense asset of that little country had been terminated, especially if any such plane carried bombs.

Now again there has been a 180 degree reversal. It is no secret the Swiss have much money, nor is it any secret that a modern fission bomb can be made with relative ease if one has the necessary material.

It would be entirely possible for that country, in some of its many mountains, with heavy PSI protection, to emplace a number of ICBMs and/or IRBMs, and then say to the rest of the world, "Please don't attack us. We hope you do not attack each other, but if you hit us we have the ability to destroy your leading cities, and we will do so."

Summarized, in effect, this illustration demonstrates the fact that any relatively small but determined country, whether in Europe, the Mid-East, Far East, Africa or South America, can now very possibly achieve a strong nuclear voice in any international discussion.

At this moment we have a country we apparently still consider a diplomatic enemy—Cuba—located but a few miles from our shores.

With that premise, let us think again of the so-called suitcase theory, or the result in the Mediterranean of a fast motor boat of the OSA or Komer class or even a submarine launched by one of the growing number of scorpions from many thousands of miles away.

Some might believe the warning contained in this report to be incredible. That is not true. Soon, without any universal firm agreements adopted by all countries, there will be bootlegging of those materials necessary to construct nuclear bombs; and before one dismisses such thinking as fancy, let us ask ourselves whether or not we believe men like Hitler or Stalin would have used such weapons if they had been available prior to their conceding defeat.

There follows a short statement from a new book on this general subject by John McPhee entitled "The Curve of Binding Energy."

> To many people who have participated professionally in the advancement of the nuclear age, it seems not just possible but more and more apparent that nuclear explosions will again take place in cities. It seems to them likely, almost beyond quibbling, that more nations now have nuclear bombs than the five that have tested them, for it is hardly necessary to test a bomb in order to make one. There is also no particular reason the maker needs to be a nation. Smaller units could do it—groups of people with a common purpose or a common enemy. Just how few

1850

people could achieve the fabrication of an atomic bomb on their own is a question on which opinion divides, but there are physicists with experience in the weapons field who believe that the job could be done by one person, working alone, with nuclear material stolen from private industry.

What will happen when the explosions come—when a part of New York or Cairo or Adelaide has been hollowed out by a device in the kiloton range? Since even a so-called fizzle yield could kill a number of thousands of people, how many nuclear detonations can the world tolerate?

Under such conditions, should we not take steps, now, to insure that our people have all the truth on this subject that could not aid a possible enemy? Then it will be the people's responsibility, as well as their representatives, to see that this grave and growing problem be handled so as to protect the future of the world as we know it.

To that end I would propose a Joint Committee which would meet as a matter of course at least one afternoon a month; with membership consisting of members of the Foreign Relations Committee, the Armed Services Committee, the Joint Atomic Energy Committee and the Appropriations Committee; and that this Committee make a report to the Congress twice a year.

1851

Department of Defense Response to Senator Mike Mansfield: Information for Consideration by the Commission. . . .*

May 1974

1. QUESTION: The Congress has been informed by the Department of Defense that none of the eight collective defense treaties to which the U.S. is a signatory power contains a provision requiring U.S. forces to be stationed overseas. Yet as of June 30, 1973, the United States had 542,000 troops stationed in over 40 foreign countries. In the absence of any treaty commitments why can't 250,000 of these military personnel be withdrawn over a period of three fiscal years?

ANSWER: It is true that the texts of our collective defense treaties do not, in so many words, commit the United States to maintaining specific numbers of troops overseas. These treaties, however, would be meaningless without a tangible manifestation of the United States' ability and determination to stand by them.

Each year, the U.S. does formally commit a specific number of troops in support of the NATO Alliance. This U.S. commitment is crucial to NATO both physically and psychologically because the other Allies do not possess either the necessary physical resources or the confidence in their own ability to face the power of the Soviet Union unassisted.

Two points must be made about the figure of 542,000 troops overseas cited as the base figure for reductions. First, this figure represents the number of troops the U.S. had in foreign countries and areas as of mid-1973. By the end of 1973, that number had *fallen by 50,000* to a level of 492,000, ashore and afloat, in foreign countries and areas. This is *fewer* troops than we have had overseas at any time *since before the Korean War.* Our troop strength overseas, moreover, has been declining rapidly and steadily for the past six years. It might properly be asked how far this trend may be allowed to continue without endangering both our own security and that of our allies.

The second point to be made about the figure cited is that it includes all our troops overseas, both ashore and afloat. The United States has become clearly aware that the Soviet Union's naval capacity has grown by impressive dimensions in recent years and may soon threaten to outpace our own. We must consider seriously whether we might not risk losing our present naval superiority if we decided to withdraw large numbers of our naval forces from abroad.

The operational consequences of a withdrawal of the size proposed are significant. Out of the total of 492,000 troops, ashore and afloat at the end of 1973, 438,000 were ground forces. If the Congress now required that 250,000 of these troops be withdrawn, the United States could possibly choose one of three ways of complying with that mandate:

—Withdraw *all* our troops in Asia and the Western Pacific in addition to nearly one-third of our NATO commitment inasmuch as we have far fewer than 250,000 troops in Asia and the Western Pacific.

—Withdraw 250,000 troops from Western Europe alone, leaving fewer than 70,000 ground troops in support of NATO.

—Withdraw some percentage of our deployments from both areas.

The first course of action would amount to *de facto* abrogation of both our Treaty of Mutual Cooperation and Security with Japan and our Mutual De-

*Senator Mansfield's letter to Secretary of Defense Schlesinger requesting answers to 111 questions is printed as Annex B.

1852

fense Treaty with South Korea. In effect, the U.S. would be cutting the ground from beneath the Japanese, our chief allies in the Western Pacific, leaving them vulnerable to both diplomatic and military pressures from the Soviet Union and the PRC. In combination with the withdrawal of our forces from South Korea, this would undermine the regional stability of all of Northeast Asia, upsetting the as yet tenuous new four-power balance now developing there between the USSR, the PRC, the U.S. and Japan. It would also effectively move the United States' own front line of defense back to the mid-Pacific, a course of action that our Pacific strategy for the past twenty-five years has been designed to avoid.

Nor would this be enough to fulfill the reduction mandate. To bring home a total of 250,000 men, would require withdrawal of well over 100,000 troops from Western Europe, or nearly one-third of our NATO commitment. We would thereby wipe out the negotiations with the Warsaw Pact on Mutual and Balanced Force Reductions inasmuch as the Soviet Union would have no reason to offer reciprocal reductions in return for U.S. withdrawals if the U.S. were under Congressional mandate to withdraw unilaterally. Although the threat from the East in Central Europe seems to many observers to have faded, the diminution of that threat is directly traceable to the United States' steadfast and formidable presence on the Continent since NATO's formation. Besides the discouraging effect upon our European allies of so large a U.S. unilateral withdrawal, a sudden and major weakening of our presence in Western Europe risks inviting precisely the sort of attack that has seemed so unlikely in recent times. Not without reason have both the Congress and the President of the United States made NATO a central commitment of our foreign policy since 1949. It would seem ill-advised indeed to sacrifice this commitment now to a hasty and over-hopeful assessment of the peacefulness of our world.

If all 250,000 troops were withdrawn from NATO, we would incur all these risks and penalties, the more intensified by reducing our commitment to the Alliance by nearly 80%. The Alliance could probably not withstand such a shock.

If we chose to withdraw portions of our deployments in both Europe and Asia, we would escape none of the penalties above. 250,000 troops could not be returned from overseas without reducing our NATO commitment by some substantial proportion, in all cases exceeding a third, and *any* large-scale unilateral withdrawal of our European deployments would deal serious damage to the Alliance.

Finally, it is necessary to take issue with the concept of the United States' proper world role that appears to underlie the proposal to withdraw so massive a proportion of our overseas troop strength. The proposal implies that it is somehow improper and unnecessary for the United States to have significant amounts of troops stationed overseas. This in turn appears to imply that the United States neither has nor ought to have major national interests and commitments throughout the globe, a notion that ceased to be tenable at the end of World War II. In today's bipolar world, despite the softening that has occurred in recent years in certain areas of our relations with the Soviets, our interests continue to conflict with theirs in many vital spheres. The necessity to guard our global interests and to uphold commitments to our allies very frequently requires the physical projection of our military power in the form of significant deployments of troops outside our borders. However much we may at times tire of this necessity, it is an inescapable consequence of our status as a Great Power.

2. QUESTION: In the FY 1974 Military Manpower Requirements Report the Department of Defense indicates that the NATO, SEATO and various Pacific mutual defense and aid treaties are the "primary applicable treaties" justifying the principal active duty missions of 11 1/3 Army and Marine divisions, 15 aircraft carriers, 160 surface warships and attack submarines and 32 air squadrons. Since, in fact, these treaties do not specify a level of U.S. force commitment what is the justification for the assignment of this massive mission requirement to our armed forces?

ANSWER: The wording of treaties announces objectives upon which the signatories have agreed. It does not specify the exact level of forces required to implement these objectives. Forces are sized instead in accordance with the capabilities of our adversaries and the contingencies for which we wish to be prepared. These capabilities and contingencies are assessed each year and the level of forces considered necessary to deal effectively with them are set forth on the basis of Presidential guidance, in the major documents that initiate the Defense budget cycle—the Joint Strategic Objectives Plan (Volume 1: Military Strategy and Force Planning Guidance; Volume 2: Force Levels), the Planning and Programming Guidance Memorandum, and the Program Decision Memoranda.

Force sizing will vary over time, depending upon variations in our adversaries' capabilities and intent. A treaty's wording, on the other hand, will remain constant. That is only to say, however, that although the objective at hand remains unchanged, the requirements for implementing that objective must adjust to changing circumstances.

3. QUESTION: According to the Department of Defense FY 74 Military Manpower Requirements Report, U.S. force levels and overseas deployments are based on accomplishing two basic national security objectives of:

1853

(1) preserving the U.S. as a free and independent nation, to safeguard its fundamental institutions and values, and protect its people.

(2) contributing to the security of other nations with whom we have treaties or whose security significantly impacts upon our security.

Please provide *by country* a specific explanation for the presence of U.S. military personnel in each foreign country where they are currently stationed, indicating precisely how this in-country presence contributes to the attainment of the two national security objectives.

ANSWER: It would be no more productive to explain our overseas deployments one country at a time, than to describe a mosaic, tile by tile. The pattern in both cases becomes meaningful only when its groupings are considered. Consequently, U.S. overseas deployments are discussed on a regional basis.

Generally, U.S. military units are deployed in two overseas regions: Western Europe and related areas, and East Asia and the Western Pacific. Our deployments in Western Europe form an interlocking network designed to forestall or withstand, as necessary, any attack by the Warsaw Pact on NATO Europe. Correlative to this objective is maintaining the approaches to and freedom of passage and maneuver in the Mediterranean Sea.

These deployments exist to give strength and credibility to the NATO Alliance, which for twenty-five years has been central to this nation's foreign policy. The continued freedom and independence of Western Europe is fundamental not only to our own physical security but to the preservation of our cultural values and political institutions. Our physical security is enhanced by the fact that Central Europe is our own front line of defense, but even more important is the fact that given our deep cultural and historical ties with Western Europe, our own society and polity would suffer severely were these nations to fall under Soviet influence.

Our deployments in Asia have been markedly affected by changing conditions there. With the termination of our ground involvement in South Vietnam, the opening of a new relationship with the PRC, and the growth in the capabilities of our Asian allies, we have been able to reduce our forces in Asia substantially over the past several years.

Despite these hopeful developments, however, we cannot discount the possibility of future conflict in view of continuing instabilities in Asia which could affect U.S. interests. To deter any further outbreak of violence in Asia, one U.S. Army division is stationed in South Korea, a Marine Division/Air Wing in Japan (including Okinawa), three tactical fighter wings at various bases in the area, and B-52 aircraft are located on Guam and in Thailand. We also maintain naval deployments, including three carrier task forces, in the Western Pacific and, on occasion, in the Indian Ocean.

With the continued improvement in South Korea's defense capabilities, we may hope that when the present modernization program is completed, South Korea will be able to defend itself against an unaided attack by North Korea. At present, our forces in Korea are designed to provide a hedge against regional uncertainties and any deficiencies in South Korea's defense posture and to provide an inducement to caution on North Korea's part.

Our deployments in Japan are essential to the security of our chief ally in the Western Pacific, and are critical to the maintenance of stability in Northeast Asia. Japan faces two giants of dubious intentions. Without a strong and visible U.S. presence there, the existing balance in Northeast Asia, so necessary to our own safety and well-being, would be endangered.

Our presence in Thailand depends heavily upon the degree to which the North Vietnamese observe the Paris Accords in the future. To date, their observance has been imperfect at best. We do, however, look to the possibility of additional reductions in Air Force units in Thailand as the situation in Southeast Asia permits.

4. QUESTION: Please specify and explain in detail the provisions of the articles and declarations in each of the following treaties which are construed as requiring or implying a US national commitment to provide forces and/or military assistance for mutual security and collective defense purposes:

—The North Atlantic Treaty
—The Southeast Asia Collective Defense Treaty
—The Inter-American Treaty of Reciprocal Assistance
—The Security Treaty between Australia, New Zealand and the United States of America
—The United States-Republic of China Mutual Defense Treaty
—The bilateral security treaty between the Republic of the Philippines and the United States
—United States declaration to participate with Central Treaty Organization (CENTO) members in some security and defense activities.

ANSWER: The preamble of each of the foregoing treaties makes clear the intent of the respective parties to act together in a collective effort to preserve peace and resist aggression. That intent is given substance in the operative articles of the treaties.

There is an operative article in each treaty (except the Rio Pact) in which the parties pledged that they will, through self-help and mutual aid, maintain and develop their individual and collective capacity to resist armed attack. This pledge does not bind the United States or its treaty partners to any specific programs of assistance or to the maintenance of any specific force levels, at home or

1854

abroad. It does bind them, however, to the principle of self-help and mutual aid. Within this principle, each party must exercise its own honest judgment as to what it can and should do to develop and maintain its own capacity, and the collective capacity, to resist attack.

Each treaty also has an operative provision committing the treaty partners to come to the assistance of each other in the event of attack. The North Atlantic Treaty, for example, recognizes that an attack against one of the parties constitutes an attack upon all of them and calls on each of the parties, acting in accordance with its constitutional processes, to take such action as it deems necessary, including the use of armed force, to restore the security of the treaty area. This does not mean that the United States or its NATO partners would automatically have to respond with force if there were an attack against a NATO ally. Their response would depend on the nature and scope of the attack. Each party would be bound to make an honest judgment of what action would be necessary under the circumstances to restore security to the North Atlantic area. It would then be bound to take such action, including the use of force if that were its judgment of what would be needed.

The Rio Treaty also recognizes that an armed attack on one American State is an attack upon all, and each of the treaty partners has pledged to assist in meeting the attack. That Treaty outlines a range of diplomatic, economic and military measures that might be taken in such an event, but stipulates that none of the parties shall be required to use force without its consent.

The remaining treaties are couched in somewhat different language. In the treaties with its Pacific partners, the United States recognized that an attack against an ally would endanger its own peace and security and declared that it would act to meet the common danger in accordance with its constitutional processes. As in the case of the North Atlantic Treaty, the United States would be obliged, in the event an ally is attacked, to make an honest judgment about what would be needed "to assist in meeting the attack" or "to meet the common danger."

The United States is not a party to CENTO, but, in a joint declaration with the parties to CENTO, the United States agreed to cooperate with them for their security and defense, and to enter into agreements designed to give effect to this cooperation. Identical bilateral agreements were concluded with the regional CENTO countries—Iran, Pakistan and Turkey. They provide that the United States will furnish such military assistance as may be agreed upon to assist these countries in the preservation of their independence and integrity. They also provide that, in the case of aggression against any one of these countries, the United States will take such appropriate action, including the use of armed force, as may be mutually agreed upon and as envisaged in the 1957 Congressional Joint Resolution to Promote Peace and Stability in the Middle East. That Resolution states—

> ". . . the President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and world peace the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed forces to assist any nation or group of such nations requesting assistance against armed aggression from any country controlled by international communism; *Provided:* That such employment shall be consonant with the treaty obligations of the United States and with the Constitution of the United States."

Relevant excerpts from the treaties noted above and the CENTO bilateral agreements are attached.

NORTH ATLANTIC TREATY

Preamble

"They seek to promote stability and well-being in the North Atlantic area.

They are resolved to unite their efforts for collective defense and for the preservation of peace and security.

They therefore agree to this North Atlantic Treaty:

Article 3

"In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

Article 5

"The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including

1855

the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Article 9

"The Parties hereby establish a council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The council shall be so organized as to be able to meet promptly at any time. The council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defense committee which shall recommend measures for the implementation of Articles 3 and 5.

Article 11

"This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. The instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which will notify all the other signatories of each deposit. The Treaty shall enter into force between the states which have ratified it as soon as the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States, have been deposited and shall come into effect with respect to other states on the date of the deposit of their ratifications."

SOUTHEAST ASIA COLLECTIVE DEFENSE TREATY

Preamble

"Intending to declare publicly and formally their sense of unity, so that any potential aggressor will appreciate that the Parties stand together in the area, and

"Desiring further to coordinate their efforts for collective defense for the preservation of peace and security,

Therefore agree as follows:

Article II

"In order more effectively to achieve the objectives of this Treaty the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and to prevent and counter subversive activities directed from without against their territorial integrity and political stability.

Article IV

"1. Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.

2. If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any Party in the treaty area or of any other State or territory to which the provisions of paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the Parties shall consult immediately in order to agree on the measures which should be taken for the common defense.

3. It is understood that no action on the territory of any State designated by unanimous agreement under paragraph 1 of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the government concerned.

Article V

"The Parties hereby establish a Council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The Council shall provide for consultation with regard to military and any other planning as the situation obtaining in the treaty area may from time to time require. The Council shall be so organized as to be able to meet at any time."

INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

Preamble

". . . Resolution VIII of the Inter-American Conference on Problems of War and Peace, which met in Mexico City, recommended the conclusion of a treaty to prevent and repel threats and acts of aggression against any of the countries of America . . .

"Have resolved, in conformity with the objectives stated above, to conclude the following Treaty, in order to assure peace, through adequate means, to

1856

provide for effective reciprocal assistance to meet armed attacks against any American State, and in order to deal with threats of aggression against any of them:

Article 3

"1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.

2. On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually take in fulfillment of the obligation contained in the preceeding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken.

3. The provisions of this Article shall be applied in case of any armed attack which takes place within the region described in Article 4 or within the territory of an American State. When the attack takes place outside of said areas, the provisions of Article 6 shall be applied.

4. Measurres of self-defense provided for under this Article may be taken until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.

Article 6

"If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack or by an extra-continental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America, the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.

Article 8

"For the purposes of this Treaty, the measures on which the Organ of Consultation may agree will comprise one or more of the following: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force.

Article 20

"Decisions which require the application of the measures specified in Article 8 shall be binding upon all the Signatory States which have ratified this Treaty, with the sole exception that no State shall be required to use armed force without its consent."

SECURITY TREATY BETWEEN AUSTRALIA, NEW ZEALAND, AND THE UNITED STATES OF AMERICA

Preamble

"Desiring to declare publicly and formally their sense of unity, so that no potential aggressor could be under the illusion that any of them stand alone in the Pacific Area, and

"Desiring further to coordinate their efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area,

"Therefore declare and agree as follows:

Article II

"In order more effectively to achieve the objective of this Treaty the Parties separately and jointly by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.

Article IV

"Each Party recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."

189

MUTUAL DEFENSE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF CHINA

Preamble

"Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the West Pacific Area, and

"Desiring further to strengthen their present efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the West Pacific Area,

Article II

"In order more effectively to achieve the objective of this Treaty, the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and communist subversive activities directed from without against their territorial integrity and political stability.

Article IV

"The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty."

MUTUAL DEFENSE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF THE PHILIPPINES

Preamble

"Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific Area,

"Desiring further to strengthen their present efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific Area,

"Agreeing that nothing in this present instrument shall be considered or interpreted as in any way or sense altering or diminishing any existing agreements or understandings between the United States of America and the Republic of the Philippines,

Article II

"In order more effectively to achieve the objective of this Treaty, the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.

Article IV

"Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.

"Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."

DECLARATION RESPECTING THE BAGHDAD PACT BETWEEN THE UNITED STATES OF AMERICA AND IRAN, PAKISTAN, TURKEY, AND THE UNITED KINGDOM

"4. Article I of the Pact of Mutual Cooperation signed at Baghdad on February 24, 1955 provides that the parties will cooperate for their security and defense and that such measures as they agree to take to give effect to this cooperation may form the subject of special agreements. Similarly, the United States, in the interest of world peace, and pursuant to existing Congressional authorization, agrees to cooperate with the nations making this Declaration for their security and defense, and will promptly enter into agreements designed to give effect to this cooperation."

AGREEMENT OF COOPERATION WITH PAKISTAN*

Preamble

"Recognizing the authorization to furnish appropriate assistance granted to the President of the United States of America by the Congress of the United States of America in the Mutual Security Act of 1954, as amended, and in the Joint Resolution to Promote Peace and Stability in the Middle East; and

"Considering that similar agreements are being entered into by the Government of the United States of America and the Governments of Iran and Turkey, respectively,

"Have agreed as follows:

*Identical Agreements were concluded with Iran and Turkey.

-1858

Article I

"The Government of Pakistan is determined to resist aggression. In case of aggression against Pakistan, the Government of the United States of America, in accordance with the Constitution of the United States of America, will take such appropriate action, including the use of armed forces, as may be mutually agreed upon and as is envisaged in the Joint Resolution to Promote Peace and Stability in the Middle East, in order to assist the Government of Pakistan at its request.

Article II

"The Government of the United States of America, in accordance with the Mutual Security Act of 1954, as amended, and related laws of the United States of America, and with applicable agreements heretofore or hereafter entered into between the Government of the United States of America and the Government of Pakistan, reaffirms that it will continue to furnish the Government of Pakistan such military and economic assistance as may be mutually agreed upon between the Government of the United States of America and the Government of Pakistan, in order to assist the Government of Pakistan in the preservation of its national independence and integrity and in the effective promotion of its economic development."

5. QUESTION: The Department of Defense has stated that independent withdrawal and deactivation of any level of U.S. forces stationed in Europe would amount to "essentially abandoning our NATO commitment." Please specify the U.S. treaty that would be abandoned by the withdrawal and deactivation of one European-based mechanized division.

ANSWER: Each year since 1951 the United States has made a commitment to maintain a certain number of divisions in Europe. The most recent commitment was agreed upon by the U.S. in December 1973. Additionally, the President has said that "Given the existing strategic balance and a similar effort by our Allies, it is the policy of this government to maintain and improve our forces and not reduce them except through reciprocal reductions negotiated with the Warsaw Pact."

6. QUESTION: What percentage of overall U.S. military manpower is assigned to units that are stationed in Europe, afloat in the North Atlantic and Mediterranean, or in the continental United States with NATO missions? What percentage of these forces are members of the Regular Army, Navy, Marine Corps and Air Force?

ANSWER: Regular U.S. forces with NATO missions are categorized as follows:

	FY 75 Active Duty Military Manpower (% of Total)
—The U.S. forces and support elements forward deployed in Europe	17%
—The U.S. forces that are ready to rapidly deploy in NATO crisis. These are mainly based in the U.S. and in general would be withheld from deployment to contingencies elsewhere.	16%
—Other U.S. forces that would be used in NATO conflict, based upon current Defense Department planning. They would also be available for conflicts in other areas.	15%

7. QUESTION: The Department of Defense has indicated that there is no treaty article per se which requires US military personnel to be stationed in the Federal Republic of Germany, but that U.S. personnel are there to implement NATO strategy and operational plans approved by General Goodpaster, the Supreme Allied Commander Europe, after consultation and agreement with national authorities concerned. Specifically, who are the national authorities that General Goodpaster consults with on U.S. military manpower levels, D-Day missions and employment of U.S. troops, and possible combat use of U.S. tactical nuclear weapons? Who in our government approves U.S. agreement on these consultations? Are these consultations and agreements placed before the Congress for consideration? (*Hearings, *supra,* at page 355)

ANSWER: NATO strategy is drawn up by the NATO Military Committee in conformity with political guidance from the NATO Defense Planning Committee in Ministerial Session (NATO Defense Ministers, chaired by the NATO Secretary General). Basic NATO operational plans are drawn up by Major NATO Commanders (General Goodpaster as Supreme Allied Commander Europe, draws up operational plans for the defense of his NATO command area) and are approved by the NATO Military Committee. Recommendations on levels of U.S. and other national military manpower for commitment in Allied Command Europe are made by General Goodpaster as SACEUR to the NATO Military Committee (MC) which reviews and consolidates the requests of SACEUR and the other Major NATO Commanders and forwards them to the NATO Defense Planning Committee (DPC) for consideration in establishing NATO force goals for the countries concerned. After establishment of NATO force goals, nations are invited to submit

1859

their resultant plans for NATO forces to the Defense Planning Committee, to include the description of forces to be committed to NATO in the year following the submission of the plans and the outline plan for national forces for NATO during the following four years. The annual commitment of forces by the countries concerned becomes effective at the December meeting of the Defense Planning Committee in Ministerial Session. The United States participates in the deliberations and actions of the NATO Defense Planning Committee (DPC) in Ministerial Session through its representative, the Secretary of Defense. The United States participates in the deliberations and decisions of the Military Committee (MC) in Chief of Staff Session, through its representative, the Chairman of the Joint Chiefs of Staff. Both committees operate on a continuing basis between Ministerial meetings (DPC) or between meetings at the Chief of Staff level (MC). The US Permanent Representative to the Defense Planning Committee is the US Ambassador to NATO; the US Permanent Representative to the Military Committee is a US flag or general officer of four-star rank. General Goodpaster, as Supreme Allied Commander Europe, is also authorized by NATO to communicate directly with the heads of government and defense Ministers on matters affecting their forces. US views and decisions presented in the major NATO committees identified above are usually approved by the Secretary of State and the Secretary of Defense and when appropriate by the President.

8. QUESTION: There has been frequent reference in DOD statements regarding the need for a "stalwart conventional capability" in Central Europe.* In terms of force units specifically what size NATO force could provide a "stalwart" conventional defense posture?

(*Testimony of Secretary of Defense Schlesinger before Subcommittee on Arms Control, International Law and Organizations of the Senate Foreign Relations Committee, July 25, 1973, pages 69 and 86.)

ANSWER: We cannot say with complete confidence what size NATO force would provide such a capability. The studies and war games we have conducted help draw conclusions, but there remain considerable uncertainties about the assumptions, inputs, and methodologies used.

Current NATO forces have basic resources of a size comparable to those of the Warsaw Pact, and NATO forces should provide a good war-fighting capability against the 80–90 Warsaw Pact divisions probably designated in Pact plans for use against the Center. We are now working to eliminate the major weaknesses and vulnerabilities in NATO's structure which might tempt Eastern aggression. Further, if the East continues to increase and improve its force, NATO must respond or the balance will be upset.

9. QUESTION: U.S. Forces are reported by DoD to constitute only 10 percent of the NATO ground forces in Europe. Please explain which NATO forces are numerically included in the peacetime total, and the number of U.S. ground forces that comprise the 10 percent. Are NATO reserve forces in this overall peacetime force under arms?

ANSWER: Only the active forces of the NATO Alliance are numerically included in the peacetime NATO ground forces in Europe. Including the 332,000 French ground forces, the Alliance has 2,100,000 ground forces in Europe. The U.S. provides 193,000 or approximately 10 percent of the total.

10. QUESTION: What do you consider the minimum essential U.S. force required in place in Central Europe to conduct an initial non-nuclear conventional defense? How long could the present forces stationed in Europe withstand an all-out offensive from the Warsaw Pact before tactical nuclear weapons were used or captured?

ANSWER: We cannot make a precise estimate of the minimum essential U.S. force required in Europe and we cannot confidently predict how long NATO could fight conventionally. War games try to do this, but there is always uncertainty in the assumptions and the methodology used in the games.

We are able to draw conclusions about the resources available to both sides. A comparison of NATO's and the Warsaw Pact's Gross National Products, defense expenditures, populations, and numbers of men under arms reveals no inherent reason for NATO to be inferior. There are some disparities. For example, in Central Europe the Warsaw Pact has 15,500 tanks against NATO's 6,000. But this advantage is offset at least in part by NATO's large number of anti-tank weapons.

The East does have a geographical advantage, because their reinforcements are located close to potential areas of conflict while many of NATO's are across the Atlantic Ocean. This, coupled with the likelihood that the Pact would have the initiative in any conflict, makes it important that we recognize a crisis quickly, react to it, and have the capability to rapidly deploy ready U.S. forces. With continued improvements in readiness, modernization and efficiency, we should be able to maintain the minimum essential forces within current manpower authorizations.

11. QUESTION: In DOD testimony before the Congress, it has been indicated that the Allies provide about 25 divisions to the NATO military force structure. How many of these divisions are supplied by France? Are these divisions integrated into day-to-day operational D-Day planning of the Supreme Headquarters Allied Powers Europe? Are French

180

Divisions in France and West Germany considered as being immediately available for D-Day combat operations in the Center Region? If not, why are they included in the listing of available NATO divisional forces?

ANSWER: The Allies, not including France, provide about 25 divisions to the NATO integrated military force structure in the Central Region. Counting five French divisions would bring the Alliance total to about 30 for the Central Region. Since France has withdrawn its forces from the integrated NATO military structure, these divisions are not expected to be integrated into day-to-day operational D-Day planning of the Supreme Headquarters Allied Powers Europe. However, France has remained a member of the North Atlantic Alliance and would under Article Five of the North Atlantic Treaty take such action, including the use of armed forces, as it deemed necessary in event of an armed attack against one or more of the Parties to the Treaty in Europe or North America. France maintains military liaison missions with the NATO Military Committee and with Major NATO Commanders.

12. QUESTION: What is the status of the negotiations with our NATO allies to establish the infrastructure for a Line of Communications (LOC) across the BENELUX countries? How much will this LOC cost the US Government? In the absence of the BENELUX LOC are US forces in Central Europe relying solely on the line of communication from Bremerhaven for incoming heavy equipment and supplies? Is the Bremerhaven LOC secure in the event of a conventional Soviet ground attack in Europe? If not secure, what are the present alternatives available for wartime heavy resupply of US forces in West Germany? How long have the negotiations on the BENELUX line of communication infrastructure been conducted with our NATO allies?

ANSWER: We have reached general agreement with Belgium, the Netherlands, Luxembourg and the UK for provision of LOC sites. Specific technical site negotiations are in progress with the aforementioned nations. The cost to the US for the envisioned LOC package depends on many factors including but not restricted to the degree of host nation support provided. Depending on the amount of host nation support the LOC package could vary from minimal outlay to a maximum of about 23 million dollars over a five-year period. The negotiations for BENELUX LOC sites started in July 1969.

13. QUESTION: What was the total cost to the U.S. Government of the LOC that was abandoned when U.S. forces withdrew from France? To date, how much has the French Government reimbursed the U.S. for the infrastructure of the LOC built across France in the 1950's? What is the present status of the petroleum, oil and lubricants pipeline across France? What percentage of U.S. POL products for our forces in Central Europe are transported through this pipeline? What is the cost to the U.S. for the pumping of these POL supplies? Is operation of this pipeline under French national control or is it under NATO direction? Is it assumed these pipeline facilities would be available to U.S. forces in the event of hostilities in Europe? If not, what alternative system of POL distribution resupply would be available to U.S. forces?

ANSWER: The U.S. had invested 643 million dollars of national funds in France from 1949 to 1966. Claims for reimbursement from France by the U.S. and NATO for facilities lost as a result of the French initiative are still being negotiated. Our NATO allies have, however, advanced about 100 million dollars to compensate the U.S. and Canada for the loss of national facilities in France. The U.S. funded pipeline from Donges to Metz is being operated by a French company (as is the NATO funded pipeline) and it is estimated that about 85% of U.S. peacetime POL requirements in Southern Germany are being satisfied. Annual O&M cost to the U.S. is about 3 million dollars. The use of the U.S. and NATO pipelines are assured by France in peacetime; however, their use in times of tension or war is reserved by the French. Alternative distribution systems, primarily road and rail, exist and additional storage and interconnections between NATO and civil unhardened pipelines are planned using NATO infrastructure funds.

14. QUESTION: In the context of planning for a NATO conventional defense posture in Central Europe what European base area hospital care facilities are planned as being available for treatment of wounded and injured U.S. military personnel? Were these hospital facilities prepared as replacements for the U.S. base area hospital complex that was constructed in France during the 1950's? What was the total cost of the U.S. wartime base hospital complex constructed in France? How much did the French Government reimburse the U.S. for this emergency hospital infrastructure when U.S. forces were forced out of France?

ANSWER: The U.S. has in conjunction with NATO planned for the use of extensive hospital facilities existing in the FRG, BENELUX, and medical units to be deployed for treatment of wounded and injured U.S. military personnel. Only minimal upgrading and maintenance on existing hospital facilities has continued since 1966; however, no replacement for the hospitals turned over to the French is planned. The cost of the one U.S. constructed hospital in France was about 2 million dollars and a settlement for this facility is included in the amount being negotiated with the French.

186

15. QUESTION: The Department of Defense has reported that there are approximately 250,000 dependents of military personnel living in Europe. I believe that nearly one-third of that total are children under 5 years of age. This would seem to present a tremendous emergency evacuation problem. I also understand that the DOD has primary responsibility for the emergency evacuation of military dependents in Central Europe. Does the Department envision it would be possible to conduct an orderly evacuation of all military dependents in Europe—particularly those living with our forward combat forces stationed near the West German border—during the time frame of heavy reinforcement and imminent hostilities? What is your appraisal of the impact such a massive evacuation during a period of increasing international tension would have on our NATO allies and the Warsaw Pact nations? Is there currently any contingency planning by the Department of Defense to have military dependents in Europe "stand-fast"? In FY 1973 what percentage of U.S. balance of payments deficits resulted from the presence of military dependents in Europe?

ANSWER: As of September 30, 1973, there were approximately 232,000 DOD military and civilian dependents in Western Europe and related areas. About one-sixth were children under 5 years of age.

The Department of State is responsible for the protection and evacuation of all U.S. noncombatants, including military dependents, in Europe (except for West Berlin for which the Department of Defense is responsible). In Germany, DOD is responsible for preparing plans for DOD sponsored noncombatants and for cooperating with DOS in integrating such plans with DOS plans.

These plans provide for both evacuation and standfast since it is possible that in some areas evacuation might not be required, would pose relatively greater danger, or because transportation would not be available.

An orderly evacuation of all military dependents in Europe, including those living with our forward combat forces, could be accomplished in the face of imminent hostilities without a significant adverse affect on our military effort. Reinforcement of our forces and evacuation could be carried out concurrently as transportation used to deploy troops and equipment could remove evacuees from Europe.

Since we would inform our NATO allies of any decision to order a massive evacuation, the meaning of such an action would be unambiguous to them and clearly understood as a step in preparation of our forces for combat. At a time of increased tension, the Warsaw Pact nations could be expected to regard other measures, particularly the build-up of U.S. forces, as more significant than the evacuation of dependents. However, as a sign of full preparation for war, evacuation could be construed by the Warsaw Pact as evidence of our determination to fulfill our military commitments to NATO. DOD BOP calculations are based on wages paid to military personnel and civilians employed by the Department of Defense. Dependent BOP expenditures are a function of those earnings. There is no way of calculating precisely what level of those expenditures would not take place if dependents were not with their military sponsors abroad.

16. QUESTION: I understand that it takes at least three to four weeks to transport the "Reforger" and "2 + 10" units to Europe. Since most of this reinforcement will travel by air, would you comment on the critical and probable availability of control of the air corridors and airspace over the projected landing sites? What is your estimate of the inflight and landing safety of this reinforcement troop airlift after the beginning of hostilities in Europe? If a massive troop reinforcement airlift is not feasible or possible, what would the overall situation be in regard to available sea transportation, docking, and forward ground transport facilities?

ANSWER: We now anticipate being able to transport Reforger and "2 + 10" units much faster than "at least 3 to 4 weeks." The current plan envisions "Reforger" delivered in less than one week and "2 + 10" following almost immediately. The FY 75 Defense Budget requests funds to appreciably improve even this advanced capability (Defense Report pp 156–164).

Control of the air corridors and air space is essential if reinforcement by air is to be successful. We anticipate maintaining air superiority during the airlift phase as a minimum. Flight safety will be within reasonable combat limits. In regards to sea movement, most sealift capacity will be devoted to resupply of expendables and heavy, specialized equipment. Limited sealift backup for troop transportation is available.

17. QUESTION: A 1973 GAO report indicated that pre-positioned heavy equipment maintained in the Federal Republic of Germany for the airlifted reinforcements was either in the wrong place, broken, or positioned so as to be vulnerable to early capture or destruction by Soviet air, armor, conventionally armed missiles or long-range artillery. Would you comment on how the situation was allowed to develop and what action has been taken to correct this problem? How many days is it estimated it would require the "Reforger" and "2 + 10" units to marry-up with this pre-positioned heavy equipment and move to enter combat operations?

ANSWER: The pre-position storage sites in the FRG, while not ideally located in all respects, are not considered to be unduly vulnerable to Soviet attack. The GAO report cited in the question was based on an inspection conducted during the per-

iod July 1971 to April 1972. The materiel deficiencies noted in the GAO report, due primarily to funds and personnel limitations resulting from the SEA conflict, had been recognized by the Army and corrective action was underway at the time of the inspection. Corrective actions taken to date include application of additional funds and personnel, increased command emphasis, and more frequent inspections to determine condition. In the fall of 1973 an inspection conducted by the Army, with Army Audit Agency and GAO participation, found that the serviceability of pre-positioned equipment was at an acceptable level and that substantial improvement had been made in asset management. As to unit availability, some marry-up units would be ready to enter combat operations within one day after their arrival.

18. QUESTION: I have been informed that U.S. logistic stockpiles for conventional contingencies in Central Europe are maintained at about 90-day levels of supply. Press reports have indicated that none of our NATO allies maintain 90-day supply levels. Why is it necessary that U.S. forces maintain greater levels of supply for conventional war contingencies than other NATO allies?

ANSWER: It is true that some selected stock levels are maintained at 90 days in Europe (heavy, bulky material) and this is due in the main to time required to effect resupply from the U.S. and the inclusion of a 15-day safety level to compensate for unexpected delays in delivery. We do use 90 days as a planning goal for some items but the Services determine how much of this materiel will be prepositioned. Our NATO allies do not have this transportation problem; therefore NATO stockpile planning calls for a lower level of combat supplies being on hand.

19. QUESTION: I understand that U.S. supply depots are generally concentrated in the Saarbrucken-Kaiserslautern-Darmstadt area. Considering that this area is only about 150–200 miles from forward position Warsaw Pact armored units, what is your estimate of the security of these large logistic stockpiles in the event of conventional warfare in the Center Region? Is it not a possibility that these supply depots, as well as the special weapons storage areas, could be overrun by Warsaw Pact forces before the supplies and weapons could be used, moved or destroyed?

ANSWER: The major U.S. supply depots at Saarbrucken-Kaiserslautern-Darmstadt are perhaps overconcentrated caused by the movement of U.S. supplies from France due to the French initiative in 1966. At NATO expense, however, additional storage was constructed in the FRG to accommodate heavy equipment and supplies to alleviate U.S. storage problems. Contingency planning exists for emergency movements/distribution of special weapons and supplies should the Warsaw Pact forces threaten these depots. The security of these depots is a function of the size and the capability of NATO's defensive forces vis-a-vis the Warsaw Pact.

20. QUESTION: Over past years DOD spokesmen have frequently stressed the importance of our Mediterranean bases in on-staging and over-flight planning for providing military assistance to Israel. Please furnish your appraisal of the validity of continuing to maintain current US bases and force levels along the Mediterranean basin in view of the decision by the Governments of Spain, Italy, Greece and Turkey to either deny or limit our use of those bases in the recent unilateral US action to follow our own national policy interests in aiding Israel.

ANSWER: The United States was disappointed, but not surprised, when some of our allies did not perceive their national interests in the recent conflict as being identical to ours. Without the cooperation of Portugal, which consented to the use of Lajes, the resupply operation which made Israel's survival possible could not have been conducted without great hazard and almost prohibitive cost. The world has shrunk in political terms, but it is still just as many miles from a US depot in Arkansas to the Middle East. If we are to be able in the future to respond to a call for help of the nature and magnitude of the Israeli operation, we must continue to develop and invest in secure bases, where we can operate as free of foreign political constraints as possible, while still maintaining our alliance system. The best runway, storage facilities, geopolitical location, or deep water port is of little utility if political constraints preclude its use.

Ultimately, the issue is whether the United States can afford to rely solely upon the good faith of others when it is believed that the vital interests of the United States or of one of its allies are in imminent peril. If we are to rely on our ability to respond to conflict as a deterrent, then we must face the consequences of forward-basing US air, ground, and sea forces in areas where our important interests may be altered by military or political compulsions beyond our control. In the long run, assuming we maintain the proper mix of ready, mobile, and versatile general purpose forces, these consequences of forward-basing will pose far fewer dangers for the US than would the closing of the bases and withdrawal of these forward-deployed forces.

Nonetheless, the primary purpose of the US force structure in Europe is to support the US and NATO's forward defense strategy. Weakening our current posture in that area could invite further accommodations to Soviet pressures and initiatives in the Mediterranean area. A withdrawal such as suggested could weaken the southern flank of the

1863

NATO Alliance and completely isolate the US from the most effective air and sea routes and the bases necessary to support not only future Middle East contingency operations, but NATO defense as well. The withdrawal of US bases and forces from this area would impair the day-to-day activities of the US Sixth Fleet, the air refueling activities supporting our tactical and strategic air forces, the deterrent posture of the NATO Nuclear Quick Reaction Alert Forces, the security of nuclear weapons provided the NATO Allies under approved programs of cooperation, and the overseas support of our ballistic missile submarine force. Furthermore, it is not an assumed fact that these bases would not be available in a future Middle East crisis. It is expected that national decisions would be made on a case-by-case basis in accordance with national threat perceptions at that time.

21. QUESTION: Also, please comment on the scenario that has been frequently postulated of using our Mediterranean bases for over-flight and on-staging of U.S. men and planes moving from the European Center Region to reinforce on the NATO Southern Flank to meet a Soviet threat in the Middle East. Would it not be logical to assume that a Soviet threat of significant magnitude to warrant the movement of U.S. forces to the Middle East would also be accompanied by the danger of increased Soviet threat in Central Europe? Wouldn't this make the shifting of U.S. and NATO forces from the Center Region (or the U.S.) an unlikely event? And if so, why do we need to continue to maintain the current Mediterranean basin bases at present levels for improbable use of on-staging and over-flight—particularly in light of our recent experience during the Mid-East War?

ANSWER: We would be reluctant to make a significant draw-down in our Central European forces to handle a Middle Eastern or Southern European contingency unless the threat in the Central Region was to be markedly reduced. Although the flexibility should be retained to use selected units from Central Europe, any large reinforcement in the Middle East would probably have to come from the U.S. If major fighting actually began in the Center Region, it is doubtful that large reinforcements would be available to be sent to the Middle East—from either Central Europe or the U.S. However, in a scenario wherein combat would start in the Middle East and not in Central Region, U.S. naval and air forces now in the Mediterranean area would provide a major part of our contribution to Middle Eastern fighting. Therefore, our current Mediterranean bases should be maintained both to support forces now in the area and to receive possible reinforcements from the U.S. and Central Europe.

22. QUESTION: Press sources reported that the Soviet Mediterranean fleet was increased to 90 vessels (compared to 66 ships in the U.S. Sixth Fleet) during the peak of the Mid-East crisis. Please provide a comparison of these buildups of the U.S. and Soviet Mediterranean fleets, showing the number and type of combat warships and submarines, naval aviation, marines afloat, naval infantry, and supply and auxiliary ships in each fleet.

ANSWER: During the October War, the Soviet Mediterranean Fleet force level was at its highest on 31 October 1973 with a total of 96 units deployed. The US had a total of 66 ships during the same period.

There was no forward deployed Soviet naval aviation afloat in the Mediterranean nor shore-based in the littoral countries. However, the Levant Coast is within the range of Soviet land-based naval air. The Soviets had four LSTs and five LSMs in the Mediterranean during this period, but there is no confirmation that any Soviet naval infantry were actually aboard.

U.S. Marines afloat totaled *approximately* 4400. At the peak period there were three aircraft carriers in the area with their embarked air wings.

23. QUESTION: The Department of Defense has reported that two squadrons of US Air Force fighter planes continue to be stationed in Turkey with a NATO mission of assisting the Turkish Air Force in NATO defense missions involving Turkish air space. What is your appraisal of the continued validity of this US force deployment in view of the recent Turkish refusal to permit US aircraft flying supplies to Israel to use landing fields in Turkey and the fact that at the same time Soviet air transports were permitted to penetrate Turkish airspace unopposed while flying military supplies to Egypt? If Soviet aircraft can penetrate Turkish airspace with impunity during the days of a US-Soviet crisis of sufficient magnitude to cause a worldwide DEFCON 3 alert of our armed forces, what is the purpose of the fighter squadrons in Turkey when they could not react to the recent crisis? What is the specific treaty obligation and mission justification that requires the continued presence of 7,000 military personnel in Turkey? State the threat to the defense of NATO's Southern flank and give specifics of how US military forces in Turkey assist NATO-committed Turkish armed forces in meeting this threat.

ANSWER: There were no requests made for the use of Turkish airfields during the US airlift to Israel. The overflights of Turkey by Soviet transport aircraft, and the question of opposing or engaging those flights in sovereign Turkish airspace were properly matters of concern and decision for the Government of Turkey rather than US forces. The US Air Force combat aircraft stationed in Turkey are an integral part of the NATO military posture, designed to implement NATO strategy and operational plans as approved by the Supreme Allied Commander Europe (SACEUR) after consultation

and agreement with the national authorities concerned. US combat aircraft stationed routinely in Turkey are responsive to SACEUR requirements. The deployment of these aircraft will retain validity so long as NATO strategy dictates a requirement for their presence.

Turkey is the southern anchor of the NATO defensive line stretching northward across Europe to the northern tip of Norway. The Warsaw Pact presence arrayed against Turkey far exceeds any conceivable requirement for defense against Turkish forces. The loss of Turkey would turn the NATO flank, opening the Bosporus, Mediterranean and Thracian approaches into Greece. To assist in countering this threat, US military personnel in Turkey man several communications/electronics facilities, a major air base at Incirlik, and a number of smaller facilities scattered throughout the country. Additionally, US military personnel are assigned to the two NATO headquarters at Izmir.

There is no specific bilateral treaty obligation which *per se* requires US military personnel to be stationed in Turkey. The US commitment to Turkey and the corresponding Turkish commitment to the US are as expressed in the NATO treaty, e.g., Articles 3, 4 and 5. These commitments, as is generally the case with worldwide defense arrangements between the US and its allies, do not obligate the US to maintain a minimum number of military personnel in Turkey. The actual US strength levels maintained in Turkey are determined by the US unilaterally, and in conjunction with our NATO partners, based upon the complex and shifting requirements of our defense policies specifically, and our foreign policies generally.

24. QUESTION: Please explain in detail the specific missions assigned and duties currently being performed by the Headquarters JUSMAT Turkey and its Army, Navy and Air Force sections. Please provide an organizational manning table for JUSMAT. Also please furnish the non-classified duties performed by the defense attaches in Turkey. Additionally, please provide your opinion on the need to continue to station U.S. combat-mission missile and air units in Turkey, and an unclassified explanation of DOD thinking in regard to their long-term strategic or tactical value through the mid-range 1980's.

ANSWER: Specific missions/duties of JUSMAT—See Annex A. Organizational manning table is published periodically by USEUCOM and is available on request.

Defense Attache Office duties include overt, accredited, professional military intelligence collection in country.

There are no combat-mission missile units in Turkey. The U.S. combat aircraft stationed in Turkey are there as an integral part of the NATO military posture. They are a part of the integrated defense of Europe within the Alliance's strategy which must encompass everything from the Norwegian Sea on the Northern flank to Eastern Turkey on the Southern flank of NATO. The U.S. must continue to meet its responsibilities in support of this strategy, which has evolved over the years to meet changing conditions and realities. So long as the threat of aggression against the independence and territorial integrity of nations with whom we share common interests exists, our country and our allies must maintain strong military forces to deter conflict. The U.S. combat aircraft in Turkey contribute now, and will for the foreseeable future, strategically and tactically to that deterrence.

25. QUESTION: What are the estimated total costs for construction of the "relocatable" steel and concrete pier constructed for the U.S. Navy "homeport" at the Greek port of Elefsis? What is the annual cost to the Navy to lease this pier? Is it actually possible to relocate the pier; if so, how long would it take to dismantle and prepare it for movement? What is the estimated cost for moving this "relocatable" pier? Wouldn't the cost of dismantling and moving such a pier exceed the value of the pier after depreciation? It is my understanding that the current "relocatable" pier at Elefsis is for use by destroyers that are homeported there. I have also been informed that the Navy intends to eventually berth an attack carrier in Elefsis Bay. Will this necessitate the construction of additional berthing, warehousing and fueling facilities? If so, what will be the estimated cost of these additional facilities? In regard to fueling facilities, will the bunkered fuel oil stored for the Sixth Fleet ships be transported to Greece from the U.S., or will foreign oil be purchased overseas to meet fuel requirements? What would be the cost and quantity of fuel required under each of the above methods of resupply? What are the current total projected costs for all facilities constructed or planned for construction through 1980 in support of the Greek homeport concept?

ANSWER: The Navy did not construct the pier at Elefsis, Greece, for the homeported ships. The destroyer pier was built by a Greek firm under a lease construct arrangement wherein the pier was built to Navy specifications and, in turn, leased by the Navy for a period of five years with renewal rights. The estimated average annual lease cost over the five year period is $802K.

The pier is relocatable and was made so at the request of the Greek government. The time required for relocating the pier from Elefsis to another location within Greece, within a 50 mile radius, is estimated to be 135 days, 70 days for disassembly and 65 days for reassembly. The cost to relocate the pier is estimated to be $1.7M. If the

185

pier were to be relocated to an area outside a 50 mile radius, the time and cost associated with shipping would have to be added to the aforementioned time estimates.

The cost of dismantling and moving the pier to an alternate location at some future date would have to be compared with cost of constructing or leasing a pier at the alternate location at that time. An economic analysis using appropriate cost factors would indicate the best alternative in terms of cost to the government. It is noted that, in the case of the leased pier in Elefsis, it was less costly to the Navy to lease that pier than relocate assets from CONUS and install them in Greece.

The aircraft carrier, when homeported, will not berth in Elefsis Bay because the channel depth into Elefsis Bay is restrictive. The carrier may instead utilize an anchorage near Megara—about 15 miles west of Elefsis. The Megara location is the area designated by the Greek government for the carrier since the present carrier anchorage—Phaleron Bay—may eventually be declared a prohibitive anchorage because the area is being developed for commercial purposes.

To accommodate the carrier at Megara, the Navy plans to provide a fleet landing and attendant facilities through lease procedures. These include a service club, recreation area, parking and utilities. It is noted that the requirement for a carrier anchorage/fleet landing is independent of any decision to homeport a carrier in Greece. The Greek government's decision to close Phaleron Bay as an anchorage affects all large ship visits to Athens, Greece, and the requirement for the anchorage/fleet landing exists in any event since Athens is the major port of call for Sixth Fleet ships in the Eastern Mediterranean.

At some future time, the Navy proposes to seek Greek government support for construction of a pier to support Sixth Fleet carriers through NATO infrastructure procedures. The ideal location would be near Athens so that the homeported carrier could also benefit from the pier. However, a carrier-capable pier is not a prerequisite to homeporting the carrier in Athens.

In addition, there is no plan to construct fueling facilities for the homeported carrier. Homeporting plans in Greece will have no direct impact on methods utilized to support the SIXTHFLT. First, the basic size of the force is not affected by homeporting nor is the volume of fuel consumed. Over 90 percent of the fuel needed by the SIXTHFLT ships is provided by at-sea replenishment techniques using USN oilers. The principal storage points utilized are Rota, Spain; Augusta Bay, Sicily; Souda Bay, Crete; Iskenderun, Turkey; Naples, Italy; and refineries in Italy and Greece. Prior to the embargo, over 75 percent of the fuel being consumed by the Sixth Fleet was being obtained from refineries in the Mediterranean. These sources were sharply curtailed during the Mideast crisis. However, now that the embargo has been lifted, the Defense Fuel Supply Center has restored services.

In regard to the cost for the various alternatives, the procurement from MED sources was by far the most economical prior to the embargo. However, the instability of prices and the changing costs of commercial tankers make any comparison unreliable at this point in time. It is anticipated, nonetheless, that overseas procurement will continue to be the most prudent method of delivery.

The monthly consumption of fuel in the SIXTHFLT is about 545 million barrels. The total projected construction costs to support the homeporting concept through 1980 is $1.948M. These are approved MILCON funds for construction of minimal aircraft support facilities at the Hellenic Air Force airfield at Elefsis. This airfield will be used by carrier aircraft during four annual carrier maintenance periods. All other facilities to support the homeporting concept in Greece are being provided through lease procedures.

26. QUESTION: It is my understanding that the purpose of the Greek homeporting plan is to permit Sixth Fleet sailors to spend more time with their families. The Chief of Naval Operations has previously informed the Congress that dependents of Sixth Fleet personnel would be expected to find homes (that Navy surveys indicated were available) in and around Athens and Piraeus-Phaleron and use existing Navy facilities located in the areas.* However, in view of the fact that the Greek Government has requested that the Navy use the bay at Elefsis rather than the previously agreed upon port at Piraeus-Phaleron, Elefsis is a greater distance from Athens and the established Navy facilities at Piraeus-Phaleron, is this situation not going to create the justification for eventual construction of U.S. dependent housing near Elefsis? What is the estimated number and cost of such dependent housing if it is in fact being planned? Also please comment on the desirability from a combat readiness standpoint of having Sixth Fleet carrier and destroyer crews scattered about at distances of as much as 30 miles (distance from Elefsis to Piraeus-Phaleron-Glyfoda where most U.S. dependents now live) from their ships. What system of crew alert notification and assembly is presently in operation for military personnel living in such scattered locations as Athens, Piraeus and Elefsis? (*Subcommittee on Europe of the House Foreign Affairs Committee "Implementation of Homeporting in Greece," July 16, 19, and 30, 1973)

ANSWER. The purpose of homeporting Navy ships overseas, including Greece, is to improve retention by decreasing the amount of family separation be-

ing experienced by Navymen and, equally important, to permit the Navy to meet its worldwide commitments with reduced forces. As the Chief of Naval Operations has testified, Navy dependents are finding suitable housing in the Athens environs and the Navy has no plans to provide housing. Since suitable housing is now available and with projections indicating continued availability within a reasonable commuting distance of current and projected ship locations, estimates on the quantity and costs of Navy provided housing have not been prepared nor are there plans to prepare such estimates. The distance from Megara, the projected carrier location, to Athens center is about 30 miles while Elefsis, the location of the destroyers, lies some 15 miles from both Athens center and the projected carrier location. These distances do not compare unfavorably with similar commuting distances to our fleet units from residential areas in Norfolk or San Diego. Thus, the effect of the geographical dispersal of the crews on combat readiness is considered about the same as in most ports used by the Navy. Crew alert notification in Athens is similar to the procedures used throughout the Navy whether in CONUS or overseas. The procedures are standard recall procedures utilizing the commercial phone system wherein designated individuals alert other individuals who in turn alert other individuals and so on. Also, in the case of Athens, the Armed Forces Radio Network can be utilized to alert personnel.

27. QUESTION: Were U.S. Sixth Fleet personnel, ships and planes granted official freedom of operational movement, entry, and exit to and from their bases in Greece during the recent Mid-East crisis? Did the Greek Government place any restrictions on the operational activities of U.S. forces based in Greece during the Mid-East crisis? Please provide your unclassified evaluation of the operational importance of the role that the sea and air bases at Elefsis, Piraeus and Athens played during the U.S. actions to provide military assistance to Israel.

ANSWER: Though the Greek Government remained neutral during the conflict, it was also highly conscious of the increased Soviet military activity in the eastern Mediterranean and of the implications of this activity for the NATO alliance. Thus, the Greeks did not interfere in any way with our access to our communications facilities in Greece and to other facilities such as Athenia Airbase and Souda Bay Airfield. There were no restrictions placed on the movements of Sixth Fleet vessels homeported in the Athens area, or on the use of logistical facilities for the re-supply of the Sixth Fleet. This security relationship was an important ingredient in the strength of the political-military posture of the United States in the eastern Mediterranean during this crisis. In sum, we consider that within the framework of its policy of neutrality, the Greek Government played a constructive role during the Mid-East conflict.

28. QUESTION: There have been reports in the press of rising anti-Americanism in Greece.* In your estimation how serious is this and how much of this anti-Americanism sentiment has been directed toward U.S. servicemen and their families living in Greece? Has this increase in anti-American feeling among segments of the Greek society had any deleterious effect on the morale and operational combat-readiness of U.S. military personnel stationed in Greece?

ANSWER: Anti-American and anti-NATO slogans did appear during the student disturbances of 14–17 November 1973 in Athens. The events which ensued caused the appearance of newspaper stories such as the Doder article. Such expressions of anti-Americanism resulted mainly from the misconception of some individuals who are opposed to the Greek Government, that the USG in some way supports the current Greek regime and supported its predecessor or even is instrumental in the development of GOG policy. The opinion has also been expressed that the USG played a role in bringing military regimes to power in Greece. None of these accusations is the least bit true. The United States has not interfered and does not interfere in the domestic affairs of Greece. Other than such anti-American sentiment that arises from gross misunderstandings of U.S. policies and activities, there is no indication that anti-Americanism is growing in Greece nor that it has had an effect on the morale and operational capability of U.S. forces stationed in Greece. Wherever U.S. military are stationed throughout the world there is always a possibility that certain incidents may occur. Greece is no exception. However, incidents involving U.S. military personnel have in general been treated routinely and have not created an atmosphere of anti-Americanism.

29. QUESTION: Please provide the specific assigned missions of the JUSMAG Greece and a listing and explanation of the current principal duties this joint headquarters and each of its Army, Navy and Air Force sections are currently performing. Please provide an organizational manning table for JUSMAG Greece. Also, please furnish a listing by type, quantity and year of delivery in-country of the major items of U.S. military equipment that JUSMAG military advisors are currently advising the Greek Armed Forces how to operate or maintain. Show the rank and service of the principal U.S.

(*Washington Post, December 8, 1973. In article Washington Post Foreign Service Correspondent Dusko Doder quotes an unnamed American official in Athens as calling homeporting "the biggest damn mistake we have made in Greece." What is your reaction to this report and why?)

187

advisors on each of these types of equipment and indicate the overall total time each of the advisors has been assigned in Greece.

ANSWER: Specific missions of JUSMAG Greece are attached at Annex A. Organizational manning table, functions and List of equipment are published periodically by USEUCOM and have been furnished to the Commission.

In this country, U.S. military personnel do not advise the host military on the operations and maintenance of specific types of equipment furnished by the United States.

30. QUESTION: What treaty article *requires* the presence of 11,000 US military personnel stationed in Italy? What was the reason that the number of US military personnel in Italy increased by 1,000 between March 31, 1973 and June 30, 1973? Please state the mission change that necessitated this 1,000 increase and whether these personnel were transferred from other locations within Europe or brought in from the US. How many US military personnel assigned to Italy are serving in combat skill assignments?

ANSWER: No treaty or article requires forward deployment of any specific number of military personnel in Italy. The US forces in Italy are, however, an integral part of the NATO military posture. The number in Italy is a result of US-NATO consultation on what is required for implementation of NATO strategy and operational plans. The increase of approximately 1,000 personnel, is attributable to the establishment of an airborne combat team at Aviano, in fulfillment of an Allied Command Europe (ACE) mobile force commitment. The team was originally formed from US units in the Federal Republic of Germany.

31. QUESTION: Please provide a listing showing by service how many U.S. military personnel are serving in Italy. Indicate what percentage of each service's personnel are assigned to combat skill jobs, command headquarters, advisory duties, support communications, and logistics assignments.

ANSWER: As of December 31, 1973, there were approximately 12,000 military personnel serving in Italy (including Sardinia and Sicily). The following table provides a breakout of these personnel, by Service, showing the percentage of personnel serving in those types of assignments requested. Since exact numbers of personnel are classified, numbers are rounded to the nearest thousand.

MILITARY PERSONNEL ASSIGNED IN ITALY (AS OF DECEMBER 31, 1973)

	Army	*Navy*	*Marines*	*Air Force*
Number of Personnel	4,000	3,000	[1]	4,000
Percentage Distribution				
Combat Skills	35	9	84	16
Command Hqs	12	15	7	11
Advisory Duties	1	*	—	1
Support Communications	13	19	—	4
Logistics and Other Support	39	57	9 [2]	68
Total	100%	100%	100%	100%

*Three Navy personnel assigned to the Military Assistance Advisory Group.

[1]Less than 500.

[2]Includes Embassy guards and attache.

32. QUESTION: The DoD has stated the mission of the Southern European Task Force (SETAF) as providing support to NATO forces in Italy and to be prepared to provide logistic support in the Mediterranean. To what "NATO Forces" other than US forces does SETAF provide support? Please describe and define the nature and extent of this support. Does SETAF "support" include the provision of a tactical nuclear-missile capability for the Italian Armed Forces? If so, what is the specific area threat that justifies this nuclear fire support, and why does it require a land-based missile capability? Why could this mission not be accomplished by other than a permanent land-based Army missile force in Italy? What is the barracks capacity of Camp Darby in Italy? What general overall level of supplies and equipment is stored at Camp Darby? What percent of these supply levels is for the emergency use of NATO allies? Are any of these stockpiles envisioned for use by US Forces in the Federal Republic of Germany? If so, what line of communication will be opened to accomplish this resupply? If the presence of SETAF is required by a valid support mission requirement, why is it not possible to streamline and consolidate the activities of this command at one post such as the support base at Camp Darby?

ANSWER: SETAF is a NATO earmarked force which passes to command of Allied Land Forces, Southern Europe (LANDSOUTH) in wartime; whereupon it provides essential combat support to NATO forces. The nature and extent of this support cannot be discussed in greater detail in an unclassified reply. Similarly, other than to report that the overall level of supplies and equipment at Camp Darby is determined by classified US and NATO plans, little unclassified information in reply to the questions can be provided. Barracks capacity is approximately 554.

33. QUESTION: What is the overall total cost of U.S. military assistance furnished to Italy since 1960? Over the past 15 years how much has been spent from military assistance funds on ship modernization and training for the Italian Navy? How much on the ship loan program? What is the role of the Italian fleet in assisting the mission of the U.S. Sixth Fleet? Do you consider that this mission assistance is a fair return for the U.S. tax money

invested? Please give a specific explanation of the combat and defense security this country has received/and receives today as a return on the tax money expended over the past 15 years for military assistance to Italy.

ANSWER: Total cost of military assistance since 1960 is $519,154,000. Unfortunately, we do not have detailed records for the fiscal years 1950–1963. However, since FY 64, *no* MAP funds have been spent for ship overhauls, and only $25,000 has been spent for training. During the last 25 years, $2,755,000 was spent for ship overhauls, and $6,313,000 for training. No MAP funds have been spent on the ship loan program.

The combat capability of the Italian Navy complements that of the U.S. Sixth Fleet and other Allied navies and forces operating in the Mediterranean Basin. During peacetime, the Italian fleet has no specific role in assistance or support of the U.S. Sixth Fleet. However, in performance of its national mission, and during NATO-related exercises, the Italian Fleet makes an important contribution to the overall NATO deterrent and defense posture. During wartime, both the U.S. Sixth Fleet and the Italian Fleet would become integrated components of the aggregate NATO force under Commander-in-Chief, South (CINCSOUTH); and the U.S. Sixth Fleet Commander would assume command of NATO Strike Forces, South (COMSTRIKFORSOUTH). The Italian military contribution to NATO deterrence during peacetime and its potential contribution to Allied defense during wartime are valuable in the context of US and West European security; hence, an excellent return on military assistance rendered to Italy over the years. The value of the return cannot be quantified, but the military posture of Italy, and other valuable allies in NATO and throughout the world, has served to permit the U.S. to enter an era of negotiation, and hopefully detente, in a position of strength. Without this strength, there would be no basis for meaningful negotiations.

34. QUESTION: Please explain why the vacation resort and fishing port of La Maddalena was selected as the homeport for an attack submarine tender. Also please list the advantages that this port was found to have over other Mediterranean ports considered. What will be the estimated total cost to the U.S. Government of this particular homeport arrangement? Is it planned to homeport additional Sixth Fleet ships at La Maddalena? How many Sixth Fleet personnel currently have their families living at La Maddalena?

ANSWER: Ideally, tender and repair ships are homeported in locations central to the operating areas of the ships which they support. Thus, the destroyer tender, USS CASCADE (AD-16), is homeported in the central Mediterranean port of Naples. The same rationale suggested an Italian port for homeporting an attack submarine tender. Based on the U.S. Navy port surveys, Augusta Bay, Sicily, was proposed as the submarine tender homeporting site. For a variety of reasons, primarily commercial, environmental and political, the Italian government recommended La Maddalena as an alternative to the busier and more congested Augusta Bay area. Thus, it was the Italian government rather than the U.S. Government which recommended La Maddalena. Although austere by U.S. standards, the La Maddalena area does have sufficient facilities to support this submarine tender homeporting initiative. It should be pointed out that whereas support for Navy dependents is provided at La Maddalena, the ship is actually moored at a NATO pier approximately one mile away on the island of Santo Stefano. One-time costs of approximately $1.7 million are anticipated for the La Maddalena effort, with annual incremental costs estimated at $4.1 million. No additional homeporting initiatives are contemplated at La Maddalena.

At present, 230 sponsored Navy dependent families are living in the La Maddalena area.

35. QUESTION: The Department of Defense has informed the Congress that the United States is not required by any treaty or agreement to station forces in Spain.* Please cite the language of the specific article or paragraph, in the 1970 U.S.-Spanish Friendship and Cooperation Agreement under which 9,000 U.S. military personnel and 14,000 military dependents are presently stationed in Spain.

ANSWER: U.S. military personnel, accompanied by their dependents, are stationed in Spain under the terms of Article 32 of the US-Spanish Agreement of Friendship and Cooperation (TIAS 6924) and the Agreement in Implementation and Procedural Annexes thereto (TIAS 6977). Article 32 reads as follows:

> The Government of Spain, subject to Spanish constitutional provisions and legislation in force, will authorize the Government of the United States to use and maintain for military purposes certain facilities in Spanish military installations agreed upon by the two Governments. Any major construction that may be necessary for the exercise of this use shall be subject to agreement between the two Governments in the Joint Committee created in Article 36 of this Chapter. The United States is further authorized to station and house the civilian and military personnel necessary for such use; to provide for their security, discipline, and welfare; to store and guard provisions, supplies and equipment and materiel; and

(*Senate Hearings, *supra*, at page 358)

1869

to maintain the services necessary for such purposes. The exercise of the functions authorized herein shall be subject to such express terms and technical conditions as the two Governments may agree upon.

36. QUESTION: How many military and DoD civilian personnel are currently assigned to the Joint U.S. Military Assistance Group/Military Assistance Advisory Group in Spain? Please furnish an organizational manning table for JUSMAG/MAAG Spain. Also please provide the specific assigned missions of the JUSMAG/MAAG and a listing and explanation of the current principal duties of the joint headquarters and each of its Army, Navy, Air Force sections. Provide a listing by type, quantity and year of delivery in-country of the major items of U.S. military equipment that JUSMAG/MAAG military advisors are actively advising the Spanish Armed Forces on how to operate or maintain. Indicate the rank and service of the U.S. military personnel advising the Spanish Armed Forces on each major type of equipment and indicate the overall total time each of the advisors has been assigned in Spain.

ANSWER: 39 military and 15 U.S. civilian personnel are assigned to JUSMAG/MAAG Spain.

Specific missions of JUSMAG/MAAG are attached at Annex A. Organizational manning table, section functions, and List of equipment are published periodically by USEUCOM and have been furnished the Commission.

In this country, U.S. military personnel do not advise the host military on the operations and maintenance of specific types of equipment furnished by the United States.

37. QUESTION: What has been the total cost of U.S. military assistance furnished to Spain since 1960? Since 1956 how much has been spent from U.S. military assistance funds on ship modernization, ship loan program and training for the Spanish Navy? What is the present specific role of the Spanish Navy in assisting the mission of the U.S. Sixth Fleet in the Mediterranean? Please state the specific U.S. security and combat reasons why you feel these assistance expenditures are justified.

ANSWER: Total cost of U.S. military assistance furnished to Spain since 1960 is $314,645,000. Unfortunately, we do not have detailed records for the fiscal years 1950–1963. Since FY 64, $2,663,000 has been spent from MAP funds for ship overhauls, and $2,200,000 for training. During the last 25 years $25,222,000 has been spent for ship overhauls and $4,366,000 for training. No MAP funds have been spent on the ship loan program.

The Spanish fleet has no specific role in assisting the mission of the U.S. Sixth Fleet. Military assistance rendered to Spain has been in exchange for transit and overflight rights, authorization to use facilities on Spanish military bases and rights to maintain communications and logistic facilities in Spain in support of national and NATO security commitments in Europe, the Atlantic and the Mediterranean Basin. These rights and facilities are important to the readiness and combat capability of our forces in Europe and enhance the overall US contribution to deterrence and defense along NATO's southern flank. Indirect benefits accrue from U.S. military assistance rendered to Spain in the form of Spain's continued orientation toward the West and improved capacity to contribute to overall Western defense.

38. QUESTION: What has been the total cost to the U.S. of the microwave system installed in Spain? Is this system a fully operational and effective system today? When was this micro-wave system begun, when finished, when turned over to the Spanish? Are there any US personnel currently involved in the operation or maintenance of this system? In the 1970 agreement did the Spanish Armed Forces request U.S. assistance in restoring the operational capability of this system? Was this assistance provided from military assistance funds? What was the problem that necessitated a request for additional U.S. assistance on this system?

ANSWER: The present micro-wave system was installed in Spain through the Military Assistance Program from 1962 through 1965 and turned over to the Spanish in 1966 at a cost to the US of $6.22 million. The system is fully operational but inadequate to fulfill future needs of the Spanish Aircraft Control and Warning (AC&W) System. There are no US personnel currently involved in operation or maintenance of the system. The 1970 agreement was implemented by an exchange of notes which provided for modernization and semi-automation of the Spanish AC&W system. Combat Grande is the joint US-Spanish program to accomplish this. An adequate microwave system is essential to the operation of such an AC&W system and, therefore, as part of Combat Grande we have contracted to increase the capacity and modernize the Spanish AC&W microwave net to meet the needs of the program. The system is jointly funded apart from military assistance funds by the US and Spanish governments. The modernization and semi-automation is required to provide adequate air defense for Spain and the US forces stationed there.

39. QUESTION: What is the present personnel strength of the 16th Air Force? How many of these personnel are assigned to 16th Air Force Headquarters at Torrejon, Spain? Please furnish a listing showing the total numbers of general officers, field grade officers, noncommissioned officers and airmen (grades E-1 through E-3) assigned to the 16th Air Force. Is it correct that the combat component of the 16th Air Force consists of 1 fighter squadron

1870

of F-4 aircraft? What is the authorized Air Force ratio of squadron personnel per plane in operational F-4 squadron of the type assigned to the 16th Air Force? What is the ratio of Air Force personnel of all ranks per combat aircraft assigned to the 16th Air Force?

ANSWER: 16th Air Force is programmed for 5,373 military personnel in FY 4/74. Of these, 61 are assigned to Headquarters, 16th Air Force. The following is a break-out by grade of the total military personnel:

Gen	*Col*	*Lt Col*	*Maj*	*Capt*	*Lt*	*NCO*	*Airman*
3	38	89	152	368	153	4439	934

The above represents a wide variety of functions in addition to aircrew and aircraft maintenance such as supply, civil engineer, administration, communication, etc.

The combat component of 16th Air Force consists of three fighter squadrons of F-4 aircraft. One of these squadrons is deployed in a NATO role at a forward operating base in Turkey.

The ratio of personnel to aircraft is based on aircraft type and aircraft utilization. In the case of Torrejon Air Base, the ratio of aircrews, weapon systems security personnel, munitions personnel, and maintenance personnel to aircraft is approximately 24-to-1. The ratio of personnel of all ranks to *combat* aircraft is approximately 75-to-1.

40. QUESTION: In Congressional testimony Department of Defense spokesmen have indicated that more than half of the air-to-ground gunnery training of the U.S. Air Force permanently stationed in Europe with NATO missions, is conducted at the Bardenas Reales firing range adjacent to the joint Spanish-U.S. base at Zaragoza.* In view of the stated importance of this training to the combat-readiness of our NATO committed Air Force units, and considering the recent refusal of non-NATO member Spain to let U.S. Air Force aircraft flying supplies to Israel use the *joint* bases, what is your evaluation of the risk to the overall combat posture of our air forces in Europe posed by continuing to rely on the use of a non-NATO base as the only facility for the major combat training of over half our Air Force in Europe? Do our NATO allies not have firing ranges that we could share? Why must we maintain and operate a separate U.S. base in Spain for the gunnery training of our air crews stationed in NATO. Why is it necessary to maintain the San Pablo-Moron airbase on standby status? Under the terms of the 1970 agreement is it not plausible that the Spanish could deny further use of the firing range at anytime? DOD has reported the FY 1972 costs for the operation of the Zaragoza airbase at $4 million; do these figures include the costs of moving crews and planes from their NATO bases to Spain? What is the annual amount of fuel consumed in moving personnel and planes to the firing range and carrying out the gunnery training?

ANSWER: There appears to be very little risk to USAFE's combat posture as a result of reliance on firing ranges in Spain for training of our NATO-committed Air Force units. Spain is a staunch supporter of and contributor to the concept of Western defense.

Recalling Under Secretary of State Johnson's August 1970 testimony before the Senate Foreign Relations Committee on the US-Spanish Agreement of Friendship and Cooperation, Spain's position regarding U.S. use of facilities on Spanish bases during the 1973 Arab-Israeli war was not unexpected. We do not believe this impairs U.S. use of military facilities in Spain in deterring/defending against external attack on Western Europe or North America.

Population pressures, urbanization and increased civil air traffic in Europe have compounded the problems associated with maintenance of sufficient military gunnery ranges. The NATO Air Weapons Training Center (NAWTC) under development in Crete, will constitute a partial alternative to the continued heavy use of Zaragoza. This facility should become operational in October 1976, and will probably be shared by the U.S., the U.K., and Greece. In addition to alleviating congestion at other Allied country ranges, it will provide a facility which can readily support Sixth Fleet operations in that area of the Mediterranean.

The benefits from sharing other continental ranges with our NATO Allies are limited. Population pressures which result in operating limitations; space limitations; range time availability (the US generally gets only the time which the host nation cannot use); and the poor weather in central Europe combine to restrict the useable range time. The Bardenas Reales air-to-ground range and the Ibiza air-to-air range provide USAFE forces with facilities to maintain their combat readiness with relative freedom from bad weather and civil air traffic congestion problems existing in Central Europe. Zaragoza Air Base provides a location, near these ranges, to which the forces can deploy and from which they can operate to conduct the intensive training needed to maintain proficiency in their wartime mission. Due to differences in weather and distances from base to range, the num-

(*Hearings before the Subcommittee on Europe of the House Foreign Affairs: Greece, Spain and the Southern NATO Strategy, July 21, 1971, page 276.)

187

ber of effective events per sortie flown on Central European ranges averages two while the average on sorties flown from Zaragoza Air Base is three and one-half. The 1970 Agreement of Friendship and Cooperation specifically provides for use of these gunnery ranges by US forces. It requires that any major change in their function or usage be referred to the US-Spanish Joint Committee on defense matters for consideration.

Moron Air Base is maintained in standby status so that it can be quickly brought into full operation to perform its wartime function. It is one of the very few airfields in Europe capable of handling sustained heavy bomber operations.

The operating cost for Zaragoza Air Base does not include the cost of moving crews and aircraft to and from Zaragoza for training. The cost is borne by the crew's home base. The amount of jet fuel used annually to move aircraft and their crews to and from Zaragoza Air Base is approximately 1,170,000 gallons. The amount of jet fuel used annually in the performance of training is approximately 14,250,000 gallons.

41. QUESTION: On July 21, 1971, Mr. John Morse, Deputy Assistant Secretary of Defense, International Security Affairs for Europe, testified before Congress that it was the considered judgment of the Defense Department that our overall Mediterranean security posture would be considerably degraded were our bases in Spain not available in crisis. Would you comment on the continuing validity of this judgment and the urgency of the continued need for three airbases in view of the Spanish refusal to grant unrestricted US use of the joint air bases during the recent Arab-Israeli War.

ANSWER: US forces and facilities are maintained in Spain first and foremost in satisfaction of our commitment to deterrence and defense in Western Europe, the Atlantic, and along the southern flank of NATO in the Mediterranean. Their use in the context of Middle East contingencies is definitely secondary. At the outset of the Yom Kippur War, Spain, like some of our NATO Allies, viewed the events more in the context of a localized Arab-Israeli conflict than a test of strategic resolve vis-a-vis the control of events in the oil-rich Middle East Region. The pro-Arab position proclaimed by the Government of Spain was consistent with her traditional foreign policy in that area and did not come as a surprise to us. We planned for and executed the resupply effort without staging through Spain. In a deepening crisis, we would expect that, as a function of time and consultation, our friends and Allies would have become more aware of the gravity of the situation in an East/West context and hence, become more willing to make a contribution to its resolution on terms favorable to Western security interests.

42. QUESTION: Is it not a fact that as recently as 1972 petroleum, oil and lubricants (POL) for U.S. air and naval activities in Spain were supplied from sources in the Caribbean, the U.S. Gulf States and Wales? Please explain the current system and sources for providing POL for our forces in Spain. Also please furnish an explanation of the current operation of the U.S. constructed pipeline system in Spain. Who operates and controls this pipeline upon which our forces must depend for their POL supplies? What percentage of the annual loan of fuel pumped through this pipeline system is U.S.-owned POL? What is the annual cost to the U.S. Government for the operation? Is U.S.-owned fuel presently stored in facilities at Cartagena and El Ferrol? If so, please explain the quantity stored and procedures by which this fuel is maintained under direct U.S. control.

ANSWER: In 1972 supply sources for our forces in Spain were Spain, the Caribbean, the U.S. Gulf States and Wales (United Kingdom). For the past three months, these same supply sources were used with the addition of Italy. With the lifting of the Arab Embargo it is anticipated that the future sources will be Spain, the Caribbean, Europe and Saudi Arabia. All supplies are delivered to Spain by tanker except for local purchases.

The petroleum products pipeline runs 485 miles from Rota Naval Base on the Southwest Spanish Coast to La Muela near Zaragoza in the Northeastern Spain, and consists of sequential sections of twelve, ten and eight inch diameter pipe, 6 pump stations and moving, unloading and transfer facilities at Rota. The pipeline connects with petroleum products storage facilities at Moron, Torrejon and Zaragoza Air Bases. The pipeline is owned and operated by the Spanish Government petroleum monopoly, Compania Arrendetaria Monopolia Petrolificos Sociedad Anonima (CAMPSA). U.S.-owned POL accounts for approximately 25% of the pipeline throughout. At this level of U.S. use there is no charge to the U.S. Government for use of the pipeline.

U.S.-owned fuel is presently stored at Cartagena and El Ferrol. Approximately 700,000 barrels of products are presently stored at these locations. This storage is maintained by the Navy under a 1970 U.S./Spanish Agreement on Friendship and Cooperation.

43. QUESTION: Are there now, or have there ever been, any US European Command contingency or emergency plans that include the use of Spanish forces or Spanish territory in any manner? Please explain why it has been incumbent on a US representative from the NATO Council and Defense Planning Committee, to travel to Madrid to inform the Spanish (who are not NATO members) on the main elements of unclassified decisions reached in

those NATO bodies? Why have other NATO allies not also considered it necessary to keep the Spanish abreast of NATO decisions and actions?

ANSWER: Under the terms of the 1970 US-Spanish Friendship and Cooperation Agreement, Spain allows the US to use Spanish bases and facilities in support of overall western defense in Europe, the Atlantic, and the Mediterranean basin. As a matter of prudence, US military commanders world-wide are directed to prepare a range of emergency and contingency plans as may be appropriate to their missions; however, details of their planning must remain classified.

Discussions by US officials familiar with NATO activity with the Spanish on the main elements of unclassified NATO decisions are viewed as a normal and valuable element in carrying out the friendship and cooperation agreement. Since bilateral conversations normally remain within the purview of the governments concerned, we cannot speculate as to motives of other NATO allies in discussing or not discussing NATO decisions and actions with the Spanish.

44. QUESTION: How many US military personnel are stationed in mainland Portugal? How many in the Azores? Please provide a listing showing the major US units to which these personnel are assigned. What percentage of these personnel are assigned in combat skill jobs? Please give the separate percentages of officers, non-commissioned officers (E-4 through E-9) and privates (E-1 through E-3) assigned in the US force.

ANSWER: DOD has assigned approximately 1,000 US military personnel in Portugal. Only a small number of these are assigned to US attache, MAAG, and NATO Hqs activities in continental Portugal; the remainder are stationed in the Azores. These personnel are assigned to the units shown in the Table below.

45. QUESTION: Please explain in detail the specific missions assigned and duties currently performed by the Headquarters MAAG Portugal and each of the Army, Navy and Air Force sections. Please provide an organizational manning table for MAAG Portugal. Also please furnish a listing by type, quantity and year of delivery in-country of the major items of U.S. military equipment that MAAG Portugal advisors are currently advising the Portuguese Armed Forces how to operate or maintain. Please show the rank and service of the advisor on each type of equipment and indicate the overall total time each advisor has been assigned in Portugal. On what date was MAAG Portugal established; when is it estimated its advisory duties can end? Do any of the advisory functions of MAAG Portugal have a relationship to Portuguese Armed Forces combat operations in Africa? Have any U.S. members of MAAG Portugal traveled to or visited with Portuguese military units engaged in Africa? What are the non-classified duties of the Defense attaches stationed in Portugal?

ANSWER: Specific missions/duties of MAAG, Portugal are attached at Annex A. Organizational manning table, Section functions, and List of equipment are published periodically by USEUCOM and have been furnished the Commission.

In this country, U.S. military personnel do not advise the host military on the operations and maintenance of specific types of equipment furnished by the United States.

This organization was established in 1951.

The Department of Defense has no plans for, and would recommend against, termination of MAAG Portugal in the foreseeable future. It is the judgment of the Department of Defense that MAAG Portugal will continue to play an important and highly worthwhile role throughout the 1970's, and that its continuation will be in the best interests of U.S. foreign policy and national security policy.

MAAG Portugal advisory functions are not

Azores		*Portugal*
Hdqtrs, US Forces	1605 Air Base Wing	Iberlant Hdqtrs (NATO)
1605 Civil Engineer Squadron	1605 Consolidated Aircraft Maintenance Squadron	Military Assistance Advisory Group (MAAG)
Lajes Hospital	1936 Communications Squadron	Defense Attache Office
7122 Broadcasting Squadron (Detachment 9)	15 Weather Squadron (Detachment 19)	
1605 Supply Squadron	1605 Transportation Squadron	
Naval Air Facility Lajes	1605 Air Base Group	
Military Traffic Movements Terminal Service (MTMTS-Port Operations)	Security Group Activity	

related to Portuguese Armed Forces combat operations in Africa and MAAG personnel do not travel to or visit Portuguese Africa.

Defense Attache Office duties include overt, accredited, professional military intelligence collection in-country.

46. QUESTION: There have been indications in the press that the Portuguese Government may request increased US military assistance in the form of modern weapons systems, as the quid pro quo for continued US use of Lajes airbase in the Azores. Would you comment on these reports and current DoD planning in regard to future levels of military assistance to Portugal, need for continued use of Lajes airbase, and alternative ways current Lajes missions could be accomplished.

ANSWER: The Department of State is responsible for the conduct of base negotiations with Portugal and has expressed its willingness to brief appropriate members of Congress on the negotiations when the status of those talks permits. Our continuing need for Lajes and associated alternative considerations are linked to the overall negotiating equation.

47. QUESTION: I am told that prior to 1966 the emergency planning for U.S. Sixth Fleet attack carriers had both of our carriers moving immediately out of the Mediterranean and into the Atlantic where it was considered there was less danger they would be sunk by enemy air or submarine action. I'm informed that present D-Day planning envisions these costly carriers remaining in the Mediterranean. In view of the fact that DOD has reported Soviet naval and air capabilities in the Mediterranean greatly increased over each of the past five years, I'm somewhat at a loss to understand the rationale behind the military emergency planning which deemed it necessary to withdraw hastily the carriers during a period prior to 1966 when there was a reduced threat to their survival, and now planning to risk both the carriers and their crews in the Mediterranean during a time that the air, sea and cruise missile threat to their survival has according to the Department of Defense dramatically increased. Would you please comment on the present facts of this situation?

ANSWER: U.S. Navy carriers operate in the Mediterranean in time of peace to maintain a U.S. presence and in time of war to conduct operations in defense of the NATO alliance and in support of unilateral U.S. national security objectives. Soviet military activities since 1966 have been characterized by significant growth in naval capabilities as evidenced by the increase in the size and effectiveness of the Soviet Mediterranean fleet. On the other hand, the size and composition of the Sixth Fleet has varied little during the same period. The U.S. has been able to maintain relative naval superiority in the Mediterranean largely as a result of qualitative improvements in ships, aircraft, missiles, communications, and tactics. There is no doubt, however, that the threat presented by the Soviet Navy in the Mediterranean is substantial. Today, as in 1966, whether or not the carriers would remain in the Mediterranean in the event of hostilities with the Soviet Union is a decision which cannot be made in advance and will depend on a number of variable and unpredictable factors. These factors include the mission assigned, the nature of the threat, the friendly forces available and the timeliness of warning which affects progress of mobilization and which may determine the total force available for mutual support in the region. We must be able at all times to counter the entire range of Warsaw Pact capabilities and our planning is so structured. Our planning, therefore, includes options to retain the carriers in the Mediterranean, to augment them as necessary, or to redeploy the carriers from the Mediterranean under certain unusual circumstances.

48. QUESTION: One of the stated missions for the US Sixth Fleet in the Mediterranean is "to permit the deployment and logistics support of US military forces overseas to ensure our continued access to vital overseas resources such as oil from the Middle East."* I find the potential implications and possibility for misinterpretation of this stated mission assignment for our Sixth Fleet particularly disturbing for an era of sensitive negotiations and increasing fuel crisis. Please explain precisely what this Sixth Fleet mission assignment is intended to convey and what Department of Defense contingency planning exists to implement this mission concept? Also what changed military requirements necessitated a 5,000 man increase in the number of US military personnel afloat near Western Europe between March 31, 1972, and June 30, 1973?

ANSWER: The stated Sixth Fleet mission "to permit the deployment and logistics support of US military forces overseas to ensure our continued access to vital overseas resources such as oil from the Middle East", has the following meaning:

The Sixth Fleet would protect US shipping which brings Middle East oil to the United States through the Mediterranean. To accomplish this mission as well as other Sixth Fleet missions, there are various contingency plans including antisubmarine warfare, antiair warfare, surface ship warfare, etc.

It is assumed that the date in question was 31 March 1973 instead of 31 March 1972. The number of US military personnel afloat near western Europe in June 1973 was inflated due to the pres-

*Hearings before subcommittee on Arms Control and International Law and organization of the Committee on Foreign Relations United States Senate Ninety-third Congress, July 25 and 27, 1973. Pages 360, 361.

1874

ence of ships which were in the process of relieving on station. Subsequently the figure has dropped to the March 1973 level.

49. QUESTION: In past readings of Department of Defense reports on the relative comparison between the US Sixth Fleet and the Soviet Mediterranean Fleet, I have been struck by the absence of any substantive indication of the combat power furnished in the Mediterranean by the naval and air forces of our NATO allies, Turkey, Greece, Italy, Portugal, Great Britain and France. Please provide a listing of the combat ships and planes (by class or type) that each of these NATO allies currently furnish to the NATO Mediterranean command; that would be available in time of emergency to act in concert with the US Sixth Fleet. Also please provide a listing of combat ships and planes available to the Soviet Union and its Warsaw Pact allies in time of emergency in the Mediterranean. I would also appreciate your comments on the extent of the current Warsaw Pact naval and air threat in the Mediterranean and the total current capability of NATO sea and air forces to counter this threat.

ANSWER: A listing of the naval and air forces of our NATO Alliance must necessarily be classified as SECRET since it is drawn from those Allied responses to the NATO defense planning questionnaire. Those responses are classified as SECRET by each of our allies and we cannot declassify this information without specific permission of each of the Allies concerned. The listing indicates those combat ships and planes which would be provided to the operational command of the Supreme Allied Commander Europe under agreed conditions of emergency. These units are not specifically committed to any NATO Mediterranean command as such but are allocated to the three European area NATO commanders: CINCNORTH, CINCCENT, CINCSOUTH, as SACEUR deems appropriate in his war plans.

We have not provided specific information on France since France does not commit any combat forces to NATO. However, France maintains military liaison with the NATO Military Committee and the Major NATO Commanders.

The magnitude of the Soviet naval threat in the Southern Region of Allied Command Europe was shown by the rapidity with which the Soviet Mediterranean squadron built to a high of approximately 95 ships during the October 1973 Middle East crisis.

Information pertaining to the numbers of aircraft and ships available to the Soviet Union in time of emergency is classified at the SECRET level to protect the intelligence sources which allowed its collection.

We believe that NATO forces in the Southern Region at present possess sufficient combat capability to deter the Soviets and the Warsaw Pact from any aggressive actions in the area.

50. QUESTION: Please explain specifically why US national security objectives require the stationing of 21,000 US military personnel in the United Kingdom. What agreement or accord provides the legal basis for the stationing of these military personnel and their 29,000 accompanying dependents in the United Kingdom?

ANSWER: US forces in the UK are an integral part of the NATO Military Posture to implement NATO strategy and operational plans as approved by the Supreme Allied Commander, Europe after consultation and agreement with national authorities concerned.

US military personnel and their dependents have been in the United Kingdom under a series of individual bilateral agreements dating back to 1950. The US forces consist of strategic and tactical Air Force units, together with communications facilities of the Navy and Air Force, and the important basing facilities for Navy fleet ballistic missile submarines at Holy Loch in Scotland. Taken collectively, these forces constitute a critically important part of the overall NATO deterrent.

51. QUESTION: I'm informed that Headquarters 3rd Air Force is the Department of Defense's executive agency for negotiations with the United Kingdom Ministry of Defense; and also helps coordinate all air and sea deployments for both peacetime and wartime objectives in the immediate area on the approaches to Europe. Isn't it a fact that the British Defense Staff Attaches in Washington act as the agency for negotiations between the United Kingdom Ministry of Defense and the US Department of Defense? Why do US Defense Attaches in London not perform in a similar manner? What are the ranks of the US Defense attaches in London? What are their duties? What other US headquarters does Headquarters 3rd Air Force help in coordinating air and sea deployments? Does Headquarters CINCUSNAVEUR also help in this sea and air coordination? Why can't such coordination activities be consolidated into one of the several existing joint US headquarters that are already maintained both in the US and Europe?

ANSWER: Headquarters 3rd Air Force is the Department of Defense's executive agency for any negotiations with the UK Ministry of Defence and provides such support as establishing the standby deployment bases necessary to receive forces in a time of crisis. The British Defence Staff Attaches in Washington do act as the agency for negotiations between the UK Ministry of Defense and the US Department of Defense but in a different role. The UK representatives make arrangements for procurement of military items in the US and coordinate on activities of the Department of Defense which

1875

concern political-military relationships that are of interest to the Foreign and Commonwealth Office as well as the Ministry of Defence. The US Defense Attache Office in London is headed by a Rear Admiral. He is assisted by an Air Force Colonel and an Army Colonel. There are also three Assistant Defense Attaches at the Commander/Lt Col. level.

The Headquarters, 3rd Air Force also participates in coordinating air and sea deployments of forces in the immediate area of approaches to Europe, one of the most strategically important potential areas of concern to the Allied efforts. The Headquarters also receives and supports US military elements and reinforcements when they arrive in the European area from CONUS or elsewhere.

Headquarters US Naval Forces Europe (CINCUSNAVEUR) has the operational control of Naval Forces, including aircraft, assigned to the Commander-in-Chief, US Forces Europe (USCINCEUR). This includes the Sixth Fleet in the Mediterranean. CINCUSNAVEUR also serves as US Commander in the Eastern Atlantic under the Commander-in-Chief, Atlantic Fleet (CINCLANT).

Consolidation of coordination activities is precluded by the scope and area of activities for which CINCUSNAVEUR has responsibility. For example, CINCUSNAVEUR has the area command of the US Eastern Atlantic Command under the Commander in Chief, US Atlantic Fleet. This area is one of the most strategically important areas of the world due to the immense volume of shipping traffic, especially oil tankers, enroute to both the US and Europe. Under his wartime mission, CINCUSNAVEUR would either command (for USCINCEUR) or support (for SACEUR) approximately 60 ships including approximately 50 combatants. As USCOMEASTLANT, he would either command (for CINCLANT through CINCLANTFLT) or support (for SACLANT through CINCEASTLANT, a UK admiral) those US naval forces engaged in sea operations in the eastern Atlantic. The most important and overriding reason for having the naval component commander of USCINCEUR in the United Kingdom is to be in position to control the access to the continent.

52. QUESTION. Are there now, or have there ever been, any Department of Defense or Washington Liaison Group contingency plans for the evacuation of US military dependents in Central Europe to Northern Ireland or the Republic of Ireland?

ANSWER: No.

53. QUESTION: What is the military requirement that necessitated doubling the size of the U.S. garrison stationed in Bermuda from 1000 personnel on March 31, 1973, to 2000 personnel as of June 30, 1973? What is the military mission of the U.S. force? How long has this force been stationed in Bermuda? What national security objective does it support? What is the total annual dollar cost of this force deployment?

ANSWER: USN/USMC manning at Bermuda went from 1353 on 31 March 1973 to 1710 on 30 June 1973. While there was a small incremental increase in permanently stationed personnel during the period (20–30 personnel), the major part of the increase resulted from an additional 10 maritime patrol aircraft (plus support personnel) arriving in Bermuda to participate in the major Atlantic Fleet Exercise SEACONEX. Upon completion of the exercise and redeployment of the aircraft detachment, Bermuda base loading returned to normal. Present U.S. manning in Bermuda is about 1000 with a 250 man patrol squadron deployed.

The mission of the U.S. Navy Maritime Patrol squadron stationed at Bermuda is (1) to conduct ocean surveillance and (2) conduct ASW training in a forward area, open ocean environment. This includes surveillance for foreign naval movements. Bermuda is the site of a small but important oceanographic station and a Search and Rescue Unit. It also supports NATO and U.S. Atlantic Fleet naval operations.

USN base support personnel and at least one Navy Patrol Squadron have been stationed in Bermuda since shortly after World War II. The squadron is in a deployed status and the personnel are not accompanied by families.

National security objectives supported by the force are: (1) Ocean surveillance to determine the submarine and naval surface threat posed against the U.S., and (2) operational readiness as an advanced force and base from which to conduct ASW in event of hostilities.

The total annual dollar cost of this force for FY-1973 was $21.9 million and is depicted as follows: (1) $9.0 million for pay and allowances to personnel permanently assigned to the supporting activities, i.e., Naval Air Station, Naval Weather Service Detachment, and Naval Facility; (2) $3.8 million for pay and allowances to personnel assigned to the single VP squadron normally deployed to Bermuda; and (3) $9.1 million aggregate operations and maintenance cost for all activities at Bermuda including the deployed VP squadron. It should be noted that the cost of the VP squadron would be incurred irrespective of its location; however, the geographic location of Bermuda reduces total requirements for maritime patrol aircraft. Two squadrons would be required to do the work that one squadron operating from Bermuda can accomplish. Additionally, certain essential ASW functions performed at Bermuda could not be duplicated from CONUS bases.

54. QUESTION: The Department of Defense indicated in 1973 that the primary purpose of the US military presence on the Japan mainland was "to

1816

maintain an operational, logistical and communications base structure which is viewed as minimally necessary to promote US security interests and foreign policy objectives in the Far East."* Who has determined what force is "minimally" necessary to support US Far East foreign policy objectives? What are the specific US missions that this "operational, logistical and communication base structure" are maintained to support? What is the total annual cost of the US forces and bases in Japan? Does this force presence result in any balance of payments deficits to the US? If so, what were the yearly deficits in fiscal years 1970, 1971, 1972, 1973?

ANSWER: Ultimately, the President of the United States is responsible for determining what forces are "minimally" necessary to support US Far East foreign policy objectives. Of course, this determination by him is usually based on recommendations made by or decisions taken by both the Secretary of State and the Secretary of Defense either jointly or separately.

The bases on the Japanese mainland and those on Okinawa (now part of Japan) serve a fourfold purpose in helping to maintain the security of Asia and the Western Pacific against possible threats from the Soviet Union or the Peoples Republic of China (PRC). First, they provide visible, credible evidence of the US ability and intention to honor its security commitments in Asia. Second, they provide a forward staging area and operational base permitting the maintenance of ground, naval and air forces in readiness for a swift reaction to threats against Japan, the Republic of Korea (ROK), or elsewhere in Asia in case deterrence fails. Third, they provide a centrally located logistical base structure which has a major mission in support of US land, air, and naval forces currently operating in the Western Pacific as well as materiel support for our allies if and when required. Fourth, these bases are the hub of an extensive communications network in the region.

To maintain an adequate level of security, deterrence, and reaction capability, it will be necessary to maintain into the future in Japan a "minimum core" logistical base structure. This base structure needs to be able to perform a wide range of important logistic support services to all US military forces in the Western Pacific; these are: (1) the availability of major storage and maintenance facilities; (2) the capability to support forces currently deployed to the Western Pacific and both Southeast and Northeast Asia; (3) the capability to serve as a transshipment point; and (4) its overall capability to support an initial response to a combat situation. The US is now rapidly approaching this "minimum core" level by phaseout or consolidation of certain facilities.

The total annual cost of the US forces and bases in Japan is not readily available as the Department of Defense overall accounting records are not maintained to reflect total US costs on an area or country basis. However, we periodically develop estimated annual operating costs of maintaining US military forces in foreign countries and areas by using appropriate factors. Included are the costs of military and civilian personnel located overseas and some of the cost of operating and maintaining facilities overseas. These estimates do not include logistic and administrative costs for support from outside the country or area, nor do they include major procurement or military construction costs. On this basis, the estimated operating costs of maintaining US military forces on mainland Japan in FY74 were $375 million. It should be emphasized, however, that it is possible to develop a variety of "annual cost figures," and that the appropriate figure depends on the use to which it is being put. For example, most of the estimated annual operating cost referred to above would remain in the DOD budget regardless of whether the units in question remained in Japan, returned to the US, or were forward deployed elsewhere in the world. Annual operating costs are germane to a discussion of whether or not units should be eliminated from our overall force structure, but not to a discussion of forward deployments.

The incremental or marginal annual operating cost *due to* overseas deployment is much smaller than the total operating cost estimate used above. An estimate of this cost requires a comparison of the savings and additional expenses likely to result from terminating the forward deployments. Savings would come from reduced reassignment, transportation, and dependent education costs, eliminated station allowances, and possible personnel reductions due to consolidation of communication units and headquarters. On the other hand, recurring cost increases would result from replacing foreign national jobs with US personnel who are paid higher wages. Added to the net result of these changes in annual operating costs is a large one-time cost increase that would result from the need to expand facilities in the US to handle the personnel and missions from overseas. The Department of Defense has not done the detailed analysis needed to estimate the incremental operating cost of US forces and bases in Japan; however, the one-time costs would be considerably larger than the possible recurring savings over several years.

The US force presence in Asia and the Pacific results in a US balance of payments deficit with Japan. Careful accounting records are kept of DOD expenditures in those countries where US forces

(*Senate Hearings. *US Forces in Europe, supra,* page 354)

1877

are deployed. In FY72, US direct defense expenditures in Japan were $615 million and in the Ryukyu Islands they were $251 million. Since the Ryukyus reverted to Japanese control in May 1972, the FY73 data combine defense expenditures in both locations. The combined FY73 figure is $864 million. It should be pointed out that about one-half of these expenditures (55% in FY72 and 45% in FY73) are personnel expenditures. Moreover, a substantial portion of these personnel expenditures (45% in FY72 and 43% in FY73) actually were completely unrelated to US force levels in Japan and Okinawa. These unrelated expenditures resulted from: (1) purchases of Japanese goods by the Pacific Post Exchange system for resale *outside* Japan and Okinawa; and (2) purchases by 7th Fleet personnel when their ships call on Japanese ports. Thus, it is inaccurate to attribute all of the Defense Department's direct defense expenditures costs in Japan to the level of US military forces stationed there.

The US military balance of payments deficits with Japan in fiscal years 1970, 1971, and 1972 were $551 million, $627 million, and $578 million, respectively. Because of the reversion of the Ryukyu Islands to Japan in May 1972, the FY 1973 data also include US military expenditures and receipts in the Ryukyu Islands. The military deficits for both Japan and the Ryukyus together are $801 million, $894 million, $824 million, and $830 million for FY70, 71, 72, and 73 respectively. It is estimated that the FY73 military deficit in Japan (excluding the Ryukyus) is approximately $600 million. It should be pointed out that Japan purchases large amounts of military equipment directly from US firms rather than under the Foreign Military Sales (FMS) program. These receipts are included in the private merchandise accounts in the overall balance of payments presentation. If they could be isolated and credited against US direct defense expenditures in Japan (as is done with similar German purchases for example), then the US military deficit in Japan would be reduced accordingly. In FY73 such military purchases in the US by Japan probably totalled over $100 million.

55. QUESTION: I'm informed that in 1971 during the Vietnam War there were approximately 20,000 US military personnel (accompanied by 36,000 military dependents) stationed in Japan in the base structure that I assume was supporting US war efforts in Vietnam. On March 31, 1973, there were 18,000 US military personnel and 29,547 dependents stationed in Japan, but despite the end of direct US military involvement in the Vietnam War, by June 30, 1973 the number of US military in Japan had increased to 19,000 military personnel. Please explain the military mission requirements which justified this increase in our Japan-based force. Also please explain why in a period of increasing detente with the Peoples Republic of China, the end of direct US military involvement in Southeast Asia, reduced tension between North and South Korea, the seating of China and *North Korea* in the UN (sic), reduced danger of conflict between Mainland China and Taiwan and a reduced US military presence in the Philippines, that it is necessary to still maintain in Japan an "operational, logistical and communications base structure" of practically the same size as was required during the period of the Vietnam War and the Cold War with the Peoples Republic of China?

ANSWER: The strength figures referred to above reflect *assigned* military personnel rather than authorized personnel. The assigned strengths in Japan have historically varied depending upon several factors—including the availability of trained military personnel. However, the US assigned military population on mainland Japan has generally decreased from 1952 to the present. During the calendar year 1971, the number of US military personnel stationed on mainland Japan declined from approximately 37,800 to 27,800. By the end of 1972, the figure had declined to approximately 19,600; and in early 1974, the figure was reduced to approximately 19,100. At the time these reductions were taking place, a few units which had been deployed from Japan to Southeast Asia during the 1960's returned to their bases in Japan.

There have been no increased mission requirements which would justify an increase in Japan-based forces. Some of the military personnel reductions in Japan were made possible by the withdrawal of US military deployments in SEA. Also, several base realignments were made by the Services so as to consolidate essential functions at favorably located bases and thereby release acreage no longer needed to the Japanese. These consolidations allowed considerable reduction in the US base support personnel. This declining trend in personnel is expected to continue as future refinements are made in the US base structure in Japan.

It is not correct to assume that most US military personnel stationed in Japan were directly supporting the US war effort in Vietnam. As already pointed out in our previous answer to question 54, US deployments in Japan (as in most other overseas locations) serve primarily two basic functions: (1) to help insure stability and deter aggression in the region by providing visible evidence of US commitments; and (2) to help provide the military capability necessary to fulfill our commitments and under our various treaties in case deterrence fails. More specifically, our base structure and deployments in Japan provide major support facilities for the 7th Fleet and serve logistical, mobility, communications, headquarters, and intelligence functions for all service deployments in Northeast Asia. The re-

1818

quirement for these functions is not limited to periods of actual military conflict in Asia.

In summary, Japan remains as the northern anchor for the security of Asia and the Western Pacific area. It provides the bases and staging areas for US ground, sea, and air forces, enabling the US to provide visible evidence of its interests in Asia and, if necessary, to respond to military contingencies in Korea, and other areas of the Western Pacific, the northern Pacific Ocean, the Sea of Japan, and the Yellow Sea. The present efforts toward detente among the major powers have not altered the forward defense requirements for the US and its Allies. The US base structure and military presence in Japan continues to be tailored: (1) to provide Japan assurance of US intent to provide a nuclear shield for Japan, (2) to deter potential aggressors, and (3) to counter aggression if deterrence fails.

56. QUESTION: The Department of Defense has indicated that no US combat troops are based on the Japanese mainland. Does this refer only to ground combat troops such as infantry, artillery and armor, or does it include the combat elements of all air, naval and Marine Corps forces stationed in Japan? Please explain the structuring of all our armed forces in Japan with particular emphasis on the combat capability of the force and specific examples of how the current force aids in providing combat defense to the American people. Please cite the provisions of the article in the United States-Republic of Korea Mutual Defense Treaty which is the legal basis for the presence in South Korea of 42,000 US military personnel. If this treaty does not provide the basis for the presence of US military forces in South Korea, please provide the language of the accord or agreement that is the legal basis. Since what date have US military personnel been stationed in South Korea? Please cite the legal basis for all periods of this presence.

ANSWER: Presently, there are no US ground combat troops based on the Japanese mainland. However, US air and naval units in Japan, including Okinawa, serve as a deterrent to possible Soviet or PRC aggression. These forces have a significant combat capability and are able to respond rapidly to contingency situations in Asia and the Pacific. The specific structure and capability of US armed forces in Japan, including Okinawa, are as follows:

US Army. The US Army structure in Japan is essentially one of logistical support and is well situated, geographically, to support combat operations in Korea and throughout the Western Pacific. It provides the nucleus of base support for rapid buildup of forces following implementation of contingency plans.

US Air Force. The US Air Force base structure in Japan supports deployed forces. Primary USAF assets in Japan are a tactical fighter wing, a tactical airlift squadron, a strategic refueling squadron, and a reconnaissance squadron, all of which are based on Okinawa.

US Navy. The US Navy structure in Japan is designed, primarily, to support deployed forces. Without these naval bases, the majority of units in Japan would have to relocate with a significant reduction of capabilities and increased costs.

US Marines. The US Marine Corps structure in Japan consists of two-thirds of a Marine Amphibious Force. All of the ground combat forces are on Okinawa and most of the air component is located on the Japanese mainland.

Japan is our most important ally in Asia, and the present Government of Japan supports the US-Japan Mutual Security Treaty and a continued US presence in Japan. The Japanese are hesitant to accept the political, economic and security risks in a "go it alone" policy but, without the visible evidence of US deployments, doubts may grow concerning the long-term viability of the US commitment. Therefore, since the maintenance of stability and peace in Asia is a major US goal and responsibility, US forces in Japan are contributing directly to the long-term defense of the United States.

The Mutual Defense Treaty between the United States and the Republic of Korea (T.I.A.S. 3097), which entered into force on November 17, 1954, provides: "The Republic of Korea grants, and the United States of America accepts, the right to dispose of United States land, air and sea forces in and about the territory of the Republic of Korea as determined by mutual agreement." US forces have been stationed in the Republic of Korea under the terms of the Mutual Defense Treaty since the end of the Korean War. Pursuant to Article IV of the Mutual Defense Treaty, an agreement further defining the rights of US Forces with respect to facilities and areas and the Status of US Forces in Korea was concluded in 1967 (T.I.A.S. 6127). This agreement superseded the Agreement between the two Governments of July 12, 1950, on jurisdictional matters. Of course, US Forces were originally introduced into Korea at the outset of the Korean War in 1950 pursuant to resolutions of the United Nations Security Council.

57. QUESTION: In March 1973, your predecessor, Secretary of Defense Richardson, stated that a continued US presence in Korea was necessary "as an earnest signal of our intent to defend a staunch ally, as a guarantee that the US (military assistance) program to modernize Korean forces would continue, and to provide political stability to the area." Please comment on your position relative to this statement and the need for the continued presence of US troops in South Korea considering the following facts previously reported by the Department of Defense.

1819

(1) The South Korean active ground forces number around 600,000 men backed by a large trained reserve. A large portion of the South Korean forces are Vietnam combat veterans. North Korean active ground forces strength has been stated by DOD as numbering around 360,000 men backed by a smaller reserve than maintained in the South. And the North Korean force has not been in sustained combat operations since 1953. There are no Soviet or Chinese combat units stationed in North Korea. (Secretary of Defense Melvin R. Laird's Annual Defense Department Report FY 1973, dated Feb 17, 1972.)

(2) The Department of Defense statement of "threat" for FY 1973 and FY 1974 indicates that both North and South Korea see aggression as contrary to their interests. (DOD Military Manpower Requirements Report, FY 1974.)

(3) The United States is already committed to a five year $1.5 billion military assistance program to further "modernize" the South Korean Armed Forces with such modern weapons as the F-5E fighter plane (See cite for #1).

(4) In FY 1972 the pay, upkeep and operating costs for US forces in Korea was reported by DOD as $584 million, military assistance was $155 million and balance of payments ran over $200 million (See cite for #1).

(5) The present South Korean Government which continues in power despite constitutional constraints to the contrary has recently further restricted the constitutionally guaranteed freedoms of its people—certainly not an indication of a manner or degree of political stability which US forces could assist in providing.

ANSWER: Because of the continuing instability in Northeast Asia, US forces are deployed on the Korean Peninsula to protect US national security interests and support our ally, the Republic of Korea in the event of hostilities instigated by North Korea. Although South/North Korean talks have been initiated to explore the possibilities of eventual peaceful reunification, the nature of tensions on the Korean Peninsula has shifted from periods of great tension to periods of lesser tension, but there is no assurance that peace and stability on the Peninsula will be maintained. The ROK's defense capabilities have continued to improve during the last four years and it is hoped that when the present ROK Forces Modernization Program is completed, South Korea will possess the military capability and confidence to defend itself against an unaided attack by North Korea. The ROK during the last two years has significantly increased its financial share of the defense burden on the Peninsula. At the present time, US forces in Korea provide a hedge against the uncertainties and deficiencies in South Korea's defense posture and assurances for the ROKG of US support as it continues its efforts for peace through discussions with North Korea. The US presence also serves to caution North Korea against precipitating new hostilities. It is believed that the goals of the Peoples Republic of China and the Soviet Union concerning the Korean Peninsula coincide with those of the United States, Japan, and the Republic of Korea; i.e., all parties wish to avoid any resumption of hostilities on the Peninsula. The US troop presence on the Korean Peninsula is offset by the presence of substantial numbers of Chinese and Soviet troops in their respective territories which border on North Korean territory. The US will maintain a troop presence in Korea as long as it is required in order to insure stability in the area.

58. QUESTION: Please indicate what actions the DoD intends to take to eliminate the excessive overhead of command and administrative personnel in the headquarters structure commanding U.S. Forces in Korea. Specifically comment on the reductions planned in 8th U.S. Army Headquarters, I U.S. Army Corps, Headquarters Air Force Korea (which has been reported as having 8,300 military personnel assigned but only 54 F-4 combat aircraft permanently assigned), KORSCOM, COMNAVFOR Korea, and the U.S. element of the U.N. Command/Joint U.S. Forces.

ANSWER: The DoD Headquarters Review is still underway. Part of that review is a complete reexamination of the Unified Command Plan which will probably result in additional savings in the unified commands, international headquarters and component commands, as well as the subordinate unified and component commands such as U.S. Forces, Korea, Eighth U.S. Army and I Corps. It may be possible to eliminate or reduce many of these commands. In addition, the Army tentatively plans to reduce headquarters spaces in Korea by about 150 spaces (about 15 per cent).

The 314th Air Division is the only Air Force headquarters activity in Korea and it is an operational headquarters activity *vice* a management headquarters as defined by DoD. The 314th Air Division consists of 117 military personnel. The 8,300 Air Force military personnel referred to in the question as being in Headquarters Air Force Korea are not headquarters personnel. The FY 1975 President's budget contains 7,963 military personnel authorized for the Air Force in Korea. These personnel, 117 of which are headquarters personnel, operate a combat component of 72 F-4 aircraft (18 currently on bailment to the Republic of Korea), and 12 0–2 aircraft. They also maintain two main support bases (Kunsan and Osan) and two dispersed contingency bases (Kwang-Ju and Taegu).

59. QUESTION: Please explain the mission and

military reasons that require the continued presence of the US Second Infantry Division in Korea. Why is 10% of the US Army Division's strength composed of South Korean soldiers? What are the annual costs to the US of these Republic of Korea soldiers serving in a US Army division? Are there not enough US Army personnel stationed in Korea to man this overseas combat division with US soldiers at full Tables of Organization and Equipment strength? Please furnish a breakout of the major unit assignments of all US Army personnel in South Korea. What is the rated degree of combat readiness and morale of this division? What were the percentage rates of the reenlistment, AWOL, nonjudicial and judicial punishment convictions and administrative discharges in the Second Infantry Division in the fiscal year 1972–73?

ANSWER: The US Second Infantry Division is positioned north of Seoul in a reserve position across the main avenue of approach to Seoul. Its location assists in protecting the ROK capital from being immediately overrun by a North Korean invasion of South Korea which could possibly destroy the economic industrial development which the South Korean people have accomplished over the past 20 years. The Second Division, currently authorized an 80% manning level, is composed of both US and Korean troops, known as Korean Augmentation to the US Army (KATUSA). The KATUSA program originated during the Korean War out of military necessity and has proven to be so successful that it has been continued down to the present time. In addition to providing Korean personnel with valuable military training, the program is estimated to save the US Government approximately $45 million annually. The Second Division maintains its authorized level of readiness, and with KATUSA augmentation, is considered combat ready. The morale of the Second Division is rated as excellent.

Following are Eighth US Army personnel statistics for FY73:

Reenlistment	31.6	per 1000
AWOL	3.4	per 1000 (FY 72)
Non-judicial punishment (Article 15)	285.5	per 1000
Judicial Punishment		
General Court Martial Convictions	.2	per 1000
Special Court Martial Convictions		
—Bad Conduct Discharge	.09	per 1000
—Other type punishments	15.38	per 1000
Summary Court Martial Convictions	8.86	per 1000

Unit personnel strengths are classified.

60. QUESTION: Are US tactical nuclear weapons stored in South Korea? Do the 2d Division Artillery, 4th Missile Command and 38th Artillery Brigade have tactical nuclear weapons delivery capability? Are there any joint US-ROK contingency plans for the emergency use of tactical nuclear weapons?

ANSWER: We neither confirm nor deny publicly the existence of nuclear weapons in specific locations outside the United States. Classified information concerning all aspects of nuclear weapons' developments, utilization, or application, to include deployments, is regularly furnished to the Congress by the Department of Defense.

61. QUESTION: What major items of weapons and equipment were declared surplus to U.S. requirements and transferred to the Republic of South Korea from U.S. stocks in South Vietnam? What was the total acquisition cost value of this equipment? Was the shipment to Korea of these surplus items of equipment paid for by the South Korean or U.S. government? What were the shipment costs? Did the U.S. government receive any form of financial reimbursement for these weapons and equipment? Was this quantity of surplus equipment and weapons discounted from the totals of military assistance that the U.S. had pledged to provide under the ROK five-year modernization program, or were these surplus items furnished over and above the U.S. assistance to be furnished under the ROK modernization program?

ANSWER: The following major items of equipment with acquisition value of $1.7 million were declared excess to US requirements and transferred to the Republic of South Korea from US stocks in South Vietnam and charged against the 5 year modernization program.

No information is available as to shipping costs since the items were for the most part transported on Korean vessels at their expense. The USG received no financial reimbursement, however, the value of equipment transferred was counted against and discounted from the totals of MAP the US has proposed to provide to ROK under the 5 year Modernization Plan. The surplus equipment and weapons were charged at 1/3 acquisition cost and identi-

Item	*Qty*	*Acquisition Value*
Trk, Cargo, 1½T.	15	$ 21,634
Trk, All types, 2½T.	10	100,122
Trk, All types, 5T	8	137,668
Trk, Trac, 10T	1	35,223
Pistol, Cal. 45	266	12,236
Rifle, Cal. 5.56MM.	4332	459,192
M.G. 7.62MM	123	87,084
Other weapons support . .	—	26,245
PRC–25 radios	228	166,896
Other commo equip.	—	205,615
Other support equip	—	234,449
Clothing, textiles & Indian equip	—	241,909
Other general supplies . .	—	18,889
TOTAL		$1,747,162

cal items planned for the Modernization Program were deleted.

62. QUESTION: Press articles have indicated that certain US-ROK construction companies are currently either negotiating for construction contracts, or actually constructing permanent type concrete troop barracks and dependent housing units on which the US is guaranteeing occupancy through 1985. Please comment on the facts in this matter and on whether or not there are plans within the Department of Defense which envision a continued US military presence in South Korea until the mid-1980's.*

ANSWER: The rental housing referred to in the press consists of 300 units in Seoul and 70 units in Taegu, developed by the Army under the Rental Guaranty Housing Program (RGH). RGH is a component used to obtain family housing only in foreign countries where the requirement is of uncertain duration, and the residual value of the housing would be high thereby minimizing the government's contingent liability. RGH projects are privately financed, designed, constructed, and maintained by the Korean sponsor for occupancy by US military families on a rental basis. Payment of the rental charge, plus utilities, is made directly to the sponsor by the occupant. The military occupant receives a Basic Allowance for Quarters, plus a special station housing allowance, which together amount to his monthly costs. In return for the sponsor agreeing to build, maintain, and make this housing available to us, DOD is authorized to enter into an agreement guaranteeing the sponsor a rental return equivalent to 97% of the rental income which he would receive from the tenants if the housing were fully occupied. The guarantee is limited to a maximum of ten years and to a dollar ceiling with respect to Korea of $185 per unit per month. The government's contingent liability is minimal due to the high residual value of the two locations involved. Should the government reduce its need for the housing, the indigenous population would fill the void, thereby reducing or eliminating any possible sponsor claim for payment of the difference between actual rents received and the 97% guarantee. There are no construction costs to be recouped from this project. The project was approved after consideration of the long-range projected force levels in Korea. The conclusion reached was that the housing in question would still be required to meet the housing needs of largely logistician-type specialists whose presence would be required even at the lowest anticipated strength level. The United States has no present plans for a reduction of US forces in Korea.

(*Washington Post, April 8, 1973, "On Freedom's Frontier: Boredom, Babes and Booze" by Don Oberdorfer)

63. QUESTION: I have seen reports that indicate that JUSMAG Korea has about 400 senior U.S. officers and non-commissioned officers and 150 U.S. and South Korean civilians assigned or employed. This seems like an excessive number in view of the fact that this U.S. military assistance group has been advising and assisting the South Korean Armed Forces for 24 years. Please furnish a copy of the organizational manning table for JUSMAG Korea. Also please provide the specific assigned missions and current duties of headquarters JUSMAG and each of its Army, Navy and Air Force Sections. Provide a listing by type, quantity and year of delivery in-country of the major items of U.S. military equipment that JUSMAG Korea military advisors are actively advising the South Korean Armed Forces on how to operate or maintain. Indicate the rank and service of the U.S. military personnel advising the South Korean on each major item of equipment and indicate the overall total time the advisors have been assigned in South Korea. What were the annual total costs to the U.S. (including pay and allowances) of JUSMAG Korea in fiscal year 1969–1973. What has been the total dollar costs to the U.S. of this military assistance group since its inception in 1949? When is it envisioned that this military assistance effort may be terminated?

ANSWER: Assigned missions/current duties are attached at Annex A. Organizational manning table and functions, and Listing of equipment have been furnished to the Commission.

In this country, U.S. military personnel do not advise the host military on the operations and maintenance of specific types of equipment furnished by the United States. Instead, a functional organization exists as shown in the function statements and manning documents attached.

The total annual costs of JUSMAG Korea in fiscal years 1969–73, including pay and allowances, is $74,406,000. Unfortunately we no longer have detailed records which would enable us to total the costs since 1949.

The Department of Defense has no plans for, and would recommend against, termination of military assistance in the near future. There is an on-going Korean Modernization Program designed to improve the capability of the ROK Armed Forces and to assist them in gaining combat self-sufficiency for defense against the North Korean threat. Completion of this Modernization Program was originally scheduled for FY 1975; however, due to funding limitations the program will have to be extended. Actual completion is subject to future Congressional security assistance appropriations. With the Modernization Program completed and continued ROK economic growth, it can be anticipated that the need for grant military assistance would be re-

duced considerably. Reassessment of our military assistance efforts is under continual review.

64. QUESTION: In the 1972 Shanghai Communique the US affirmed its intention to ultimately withdraw all US forces and military installations from Taiwan. Yet in 1972 and throughout 1973 the number of US military personnel stationed in Taiwan remained at around 9,000. What future plans, if any, does the Department of Defense have in regard to a substantive reduction in the number of US personnel assigned to the Taiwan Defense Command and Military Assistance Advisory Group? With the end of direct US military involvement in Southeast Asia why is it not possible to now withdraw the US air transport elements and most of the communication units that were there to support US combat efforts in Southeast Asia?

ANSWER: By the end of 1973, the 374th Tactical Airlift Wing was withdrawn from Taiwan with elements relocated to the US and at terminal elements of the aerial pipeline in the Western Pacific. The continued need for this activity on Taiwan had decreased with the reduction in US involvement and hostilities in Southeast Asia and with the lessening of tensions in the area. Accordingly, with this and other reductions, US military personnel stationed on Taiwan have been reduced to under 6,000 as of 31 December 1973. As indicated by the foregoing, the Department of Defense has under continuing review our force posture and basing and support structure in Taiwan. Further adjustments in that posture can be anticipated as security requirements permit.

65. QUESTION: Please cite the language of the article of the 1954 United States-Republic of China Mutual Defense Treaty, or other pertinent agreement or accord, which provides the legal basis for the presence on Taiwan of 9,000 US military personnel and nearly 5,000 dependents. Also please cite the specific language of the 1954 Mutual Defense Treaty which is construed to commit the United States to providing military forces such as the Taiwan Defense Command which are primarily responsible for assisting in the defense and security of Taiwan.

ANSWER: The basic authority for the presence of United States forces in Taiwan is contained in Article VII of the 1954 Mutual Defense Treaty.

> "The Government of the Republic of China grants, and the Government of the United States of America accepts, the right to dispose such United States land, air and sea forces in and about Taiwan and the Pescadores as may be required for their defense, as determined by mutual agreement."

More detailed arrangements concerning the status of United States armed forces, members of the forces, and their dependents on Taiwan are contained in an Exchange of Notes, dated August 31, 1965 (TIAS 5986). There are currently under 6,000 US military personnel stationed on Taiwan.

There are no provisions in the 1954 Treaty which commit the United States to provide specific forces for the defense of Taiwan. Article II of the 1954 Treaty does, however, bind the United States and the Republic of China to assist, through self-help and mutual aid, in developing their collective capacity to resist armed attack. Additionally, in Article V of the Treaty, the United States recognized that an attack against Taiwan would be dangerous to its own peace and safety and declared that it would help meet the common danger in accordance with its constitutional processes.

The Taiwan Defense Command was established to improve the collective capacity of both parties to resist armed attack in the treaty area. No specific forces are assigned to the Taiwan Defense Command, but the establishment of the Command in peacetime permits advanced planning on how such forces might be employed in the event of an attack against Taiwan and a decision by the United States Government under Article V of the Treaty to commit United States forces in resisting that attack.

66. QUESTION: What is the current authorized strength of MAAG Taiwan? Please furnish a copy of the organizational manning table for this MAAG. Also provide the specific assigned missions and current duties of the MAAG headquarters and each of its Army, Navy and Air Force Sections. Please provide a listing of the major items of U.S. equipment on which U.S. MAAG advisors are currently assisting the Republic of China and the rank and service of the U.S. advisors so assigned. On what date was this MAAG established? When is it envisioned its advisory duties can be terminated? What are the non-classified duties of the U.S. Defense attaches in Taiwan?

ANSWER: Current authorized strength of MAAG Taiwan is 166 military, 27 U.S. civilians, and 25 local civilians.

Specific missions and duties of MAAG are classified. Organizational manning table, functions and list of equipment are published periodically by CINCPAC and have been furnished the Commission.

In this country, U.S. military personnel do not advise the host military on the operations and maintenance of specific types of equipment furnished by the United States.

This organization was established in 1951.

There are no plans to terminate the advisory duties of MAAG Taiwan at this time. However, military assistance materiel grants to Taiwan will be eliminated in FY 74. As Taiwan moves from grant

185

aid to sales, a reduction in the size of the MAAG and redirection of its efforts are appropriate. MAAG China has been significantly reduced over the last several years.

Defense Attache Office duties include overt, accredited, professional military intelligence collection in-country.

67. QUESTION: Please explain the change of military mission or force requirement that caused the number of US personnel stationed in the Philippines to increase by 1,000 from March 31, 1973 to June 30, 1973. What are the military missions that require 16,000 US military personnel stationed in the Philippines? Please cite the specific language of the treaty, agreement or accord which is the legal basis for the presence of the US force and their accompanying 15,000 dependents.

ANSWER: The apparent increase of 1,000 military personnel during that reporting period was due to an administrative error. The Navy improperly coded over 1,000 personnel from USS CORAL SEA aircraft squadrons as being ashore instead of afloat. However, in the latter part of FY 1973 two C-130 squadrons were relocated from Taiwan to the Philippines which, combined with other minor service variations, has resulted in a current total ashore strength of a little over 16,000 US military.

The bulk of the 16,000 personnel is Air Force and Navy. The small number of Army personnel assigned are for the purpose of port logistics and associated functions in the Manila area. Air Force and Navy personnel and related units in the Philippines serve to support and advance the national policies and interests of the United States in the Western Pacific. Clark and Cubi Point are major air facilities for staging US air and ground forces in the Southwest Pacific.

The 13th Air Force at Clark AFB has a mission to conduct, control, and provide logistic and communication support for defensive and offensive air operations relating to USG commitments in the area.

Navy units at Subic Bay, Cubi Point NAS and San Miguel operate under the Commander Naval Forces, Philippines to provide necessary logistic, repair, communications and training support for US Seventh Fleet units. Subic provides the only suitable US Naval facility in the Southwest Pacific and Indian Ocean for ship repair, maintenance and logistics support of naval forces.

In general, forces are related to Western Pacific commitments such as the US-Philippines Mutual Defense Treaty. The number of personnel assigned in the Philippines is considered appropriate to the operation and support of forces in the Western Pacific area. It should be noted that the current total of 16,000 personnel represents a significant reduction from the June 1969 figure of over 28,000.

Article I

Grant of Bases

1. The Government of the Republic of the Philippines (hereinafter referred to as the Philippines) grants to the Government of the United States of America (hereinafter referred to as the United States) the right to retain the use of the bases in the Philippines listed in Annex A attached hereto.

2. The Philippines agrees to permit the United States, upon notice to the Philippines, to use such of those bases listed in Annex B as the United States determines to be required by military necessity.

3. The Philippines agrees to enter into negotiations with the United States at the latter's request, to permit the United States to expand such bases, to exchange such bases for other bases, to acquire additional bases, or relinquish rights to bases, as any of such exigencies may be required by military necessity.

Article XI

Immigration

1. It is mutually agreed that the United States shall have the right to bring into the Philippines members of the United States military forces and the United States nationals employed by or under a contract with the United States together with their families, and technical personnel of other nationalities (not being persons excluded by the laws of the Philippines) in connection with the construction, maintenance, or operation of the bases.

68. QUESTION: I am informed there are about 50 U.S. military personnel assigned to MAAG Philippines.* What is the mission and assigned duties of the MAAG headquarters and its Army, Navy and Air Force Section? What are the major items of U.S. equipment on which U.S. advisors assist the Philippine Armed Forces? Please furnish an organizational manning table for MAAG Philippines. On what date was this MAAG established? When is it envisioned its advisory functions can be terminated? What phases of counterinsurgency training has the MAAG provided to the Philippine Armed Forces? Have MAAG U.S. Army advisors ever accompanied the Philippine Army units they advise on field operations?

ANSWER: Mission/duties of MAAG are attached at Annex A.

Functional duties of Sections of MAAG, Organizational manning table and List of Equipment are

(*Department of Defense Report on MAAG/Mission/MILGP Data, Dec 31, 1972)

published periodically by CINCPAC and have been furnished the Commission.

In this country, U.S. military personnel do not advise the host military on the operation and maintenance of specific types of equipment furnished by the United States.

This organization was established in 1947.

The Department of Defense has no plans for, and would recommend against, termination of JUSMAAG Philippines in the foreseeable future. It is the judgment of the Department of Defense that JUSMAAG Philippines will continue to play an important and highly worthwhile role in its advisory capacity throughout the 1970's, and that its continuation will be in the best interests of U.S. foreign policy and national security policy. As before, the strength, organization and specific advisory functions of the MAAG will continue to be adjusted as changes in the Security Assistance Program require, taking particularly into account the needs and capabilities of the Philippine Armed Forces as these evolve.

JUSMAG—Philippines does not conduct nor participate in counterinsurgency training for the Philippine Armed Forces (AFP). JUSMAG has and does schedule attendance of AFP personnel to receive counterinsurgency related subjects at military schools in the U.S. and coordinate Philippine Navy/Marine participation in counterinsurgency-type joint/combined U.S.-ROP naval training exercises conducted in U.S. controlled Subic Bay area.

U.S. Army advisors do not accompany Philippine Army or Philippine Constabulary units on field operations. There is a specific Country Team policy against entry of any JUSMAAG personnel whomsoever in areas where there are anti-dissident operations.

JUSMAAG Philippines is assigned a Military Assistance role only at the national level. U.S. Army MAAG personnel do not perform direct advisory functions below the level of the Department of National Defense, the Armed Forces Philippine General Headquarters, or Service Department Headquarters levels. These offices are all located in the Manila area.

69. QUESTION: The Department of Defense has stated that Okinawa serves as the principal offshore operational and logistical supply base for U.S. forces in Northeast and Southeast Asia, and estimates that 38,000 U.S. military personnel and nearly 20,000 dependents will be stationed there in FY 1974. Please explain why U.S. security requires 19,000 U.S. military personnel in Japan "to maintain an operational, logistical, and communication base structure to promote U.S. security interests in the Far East," and 38,000 additional U.S. military personnel in the Japanese administered Ryukyu Islands to provide yet another "logistical supply base structure" for the same area (for example, Northeast Asia would appear to be more readily serviced by supply facilities in Japan)? And what are the U.S. combat forces in the Western Pacific area being served by this vast U.S. logistical base structure? Please list the military combat forces that are served by this logistical base structure. And explain why they require such a vast forward logistical support capability in Asia (Hearings supra at page 353).

ANSWER: The bases in Japan and on Okinawa serve a four-fold purpose in helping to maintain the security of the Western Pacific. First, they provide a forward staging area and operational base permitting the maintenance of ground, naval and air forces in readiness for a swift reaction to threats against U.S. vital interests in the area, Japan, the Republic of Korea, the sea lines of communication, or elsewhere in Asia. Second, they provide a centrally located logistical base structure which has a major mission in support of US land, air, and naval forces operating in the Western Pacific as well as materiel support for our allies if and when required. Third, Japan and Okinawa are the hub of an extensive communications network in the region. Fourth, by providing visible, credible evidence of deterrent power, the bases contribute to Asian stability and security by exhibiting US intent to honor its security commitments.

On Okinawa, it will be necessary to maintain into the future a "minimum core" logistical base structure. The US is now rapidly approaching this level by phaseout or consolidation of certain facilities. The logistical structure on Okinawa will serve to maintain essential operational, logistical, and communications capability, as well as serving as a staging base for mobile combat and combat support units in an emergency situation. In the above context, it should be noted that of the 37,000 US military personnel assigned to Okinawa, 16,000 are Marine forces of the 3rd Marine Division (referenced in question 71) which are forward deployed to support national policy and strategy.

Okinawa performs a wide range of important logistic support services to all US military forces in the Western Pacific, e.g., USSAG, III MAF, the 7th fleet and the 2nd Infantry Division. These services include: (1) the availability of major storage and maintenance facilities; (2) the capability to support forces deployed to both Southeast and Northeast Asia; (3) the capability to serve as a transshipment point; and (4) the overall capability to respond quickly to support forces committed to combat in Northeast or Southeast Asia. Supplies transported through Okinawa and maintenance performed there have reduced both costs and response time during peak periods of activities during the past decade.

1885

The US Army logistical base structure in Japan is an important part of the logistical structure and, as you have indicated, is intended to provide the nucleus for rapid build-up of forces following implementation of contingency plans. These facilities are well situated geographically to support combat operations in the ROK and throughout the Western Pacific. These facilities were designed to support not only the emplaced 2nd Infantry Division and supporting artillery, but also any other UN force deployed to defeat aggression on the Korean peninsula. However, the US military posture in Japan has been reduced to the point where the existing logistical base structure is adequate only to support an initial response to a combat situation and is primarily oriented to support naval forces.

Loss of Naval logistical support facilities in Japan would seriously degrade the US Navy operational capabilities due to insufficient naval facilities elsewhere in the Western Pacific. Based on military, economic, and political considerations, it would not be feasible to relocate present logistical capabilities to other areas within the Pacific.

70. QUESTION: Please cite the language of the article or paragraph in any agreement or accord signed between the United States and Japan which provides the legal basis for a U.S. commitment to maintain 38,000 military personnel in Okinawa. What is the total annual cost to the U.S. of our bases and personnel in Okinawa?

ANSWER: Article VI of the "Treaty of Mutual Cooperation and Security between the United States of America and Japan", dated 19 January 1960, provides the legal basis for the stationing of U.S. forces in Japan. Article VI, in part, states:

> "For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan."

Under paragraph 1 of Article III of the Agreement between the United States of America and Japan concerning the Ryukyu Islands and the Daito Islands or the "Okinawa Reversion Treaty", dated 17 June 1971, Japan was committed to grant the United States upon reversion the use of military facilities and areas in Okinawa in accordance with the 1960 treaty.

Department of Defense overall accounting records are not maintained to reflect total U.S. costs on an area or country basis. However, we periodically develop estimated annual operating costs of maintaining U.S. military forces in foreign countries and areas by using appropriate factors. Included are the costs of military and civilian personnel located overseas and some of the cost of operating and maintaining facilities overseas. These estimates do not include logistic and administrative costs for support from outside the country or area, nor do they include major procurement or military construction costs. On this basis, the estimated operating costs of maintaining U.S. military forces in Okinawa in FY 1974 were $520 million.

71. QUESTION: Please explain the mission and purpose of the continued presence of most of the 3rd Marine Division in Okinawa. When is it anticipated that this ground combat division can be withdrawn?

ANSWER: The retention of Marine Corps forces forward deployed on Okinawa is based on the military and political contribution of these forces to national policy and strategy.

In the context of a military contribution, Marine forces forward deployed on Okinawa are an integral part of the US naval presence in the Western Pacific. As part of this naval presence, Marine forces are capable of rapid response across a full spectrum of possible military contingencies throughout the Pacific theater. Additionally, Marine unit availability is enhanced by virtue of the shorter transit from Okinawa to possible deployment areas in East Asia than from the CONUS.

The political contribution of Marine forces forward deployed on Okinawa must be measured in terms of their contribution to deterrence, stability in the area and assurance to our allies, especially Japan, Korea, and Taiwan of the credibility of US commitments to our Mutual Security Treaties with these countries.

The value of Marine forces in the Northeast area is not viewed as merely land forces; but rather in the context of an amphibious force and part of the overall US naval presence. Japan, as a maritime trader without the naval forces to protect her interests, places great value on this US presence.

Marines have been deployed in the past to meet amphibious and other contingencies in Korea, Thailand, and Vietnam. By virtue of these deployments and periodic amphibious exercises throughout the region, the utility of Marine forces as a contingency force is apparent to the region as a whole as part of the US naval presence and capability to project power quickly ashore.

Based on the above, there are no plans in the near term for the redeployment of the Marine forces from Okinawa.

72. QUESTION: Please cite the article and language of the agreement or accord, signed by the U.S. and Thailand, which provides the legal basis for a U.S. commitment of 39,000 military personnel stationed in Thailand. What U.S. national security objective requires the continued presence of U.S. military personnel in Thailand? In consideration of the recent change of government in Thailand, what is

1886

your estimate of when it will be possible to withdraw JUSMAG Thailand? I am told that there are about 200 U.S. military personnel assigned to this joint U.S. military assistance group; what is the mission, and assigned duties of these military advisory personnel? What are the major items of equipment and the date delivered in-country, which U.S. advisors assist the Thai Armed Forces in operating or maintaining? Have U.S. military advisors assisted in the counterinsurgency training of the Thai Armed Forces; do these U.S. advisors accompany the Thai units they advise on field operations? What was the total annual cost to the U.S. in FY 1973 of the presence of our military personnel and bases in Thailand?

ANSWER: U.S. forces are in Thailand on the basis of informal and oral agreements with the Thai authorities covering use of the air bases and other installations. As of 1 May 1974 there were some 34,500 military personnel in Thailand.

The U.S. continues to maintain military forces in Thailand as a symbol of our resolve to support the efforts of Southeast Asian nations in bringing lasting peace to the area. Although the U.S. combat role has ended, the presence of the U.S. military in Thailand provides visible evidence that we are not abandoning those countries in Southeast Asia which we supported at great cost over the past decade. We continue to reassess our force posture in light of changing circumstances in the region. In this regard, we have withdrawn about 10,000 U.S. military personnel from Thailand since the signing of the Paris Accords, and plans to implement further withdrawals were recently announced in Bangkok. In addition, on 29 March the U.S. and Royal Thai Governments announced their intention to reduce U.S. forces by an additional 10,000 military manpower spaces.

The recent change of government has not affected Thailand's perception of the internal and external threats to its security, its requirements for assistance in developing the capabilities of its military forces to counter these threats, or its reliance on continued U.S. aid as a complement to its own major efforts to achieve force improvements. We anticipate continued requirements for U.S. military assistance in some form, whether grant, sales, or technical assistance, and are consequently unable to forecast when JUSMAGTHAI may be totally withdrawn. We do, of course, continually reassess program and manpower requirements.

These military personnel are assigned to a joint organization which provides an interface between the USG and Thai Armed Forces on military assistance matters. As such they assure U.S. policies, particularly military, are furthered in Thailand. They advise the Thai Armed Forces on the proper utilization, maintenance and employment of weapons systems provided through U.S. aid or sales. They also schedule selected training in the CONUS so Thai personnel can better utilize and maintain such systems. Further, they aid the Thai Armed Forces in ordering forward supply and materiel items to support and assure a ready status of weapons systems. In addition to these broad advisory and assistance roles these U.S. personnel assure that U.S. equipment is not utilized in a manner detrimental to U.S. interests.

Selected major item deliveries:

Item	*Date Last Delivered*
M-16A1 Rifles	Continuing Deliveries
Military Trucks (½-5 Ton)	FY 1973
Portable Radios (Ground-to-Ground & Ground-to-Air)	Ongoing
UH-1H Helicopters	Ongoing Periodical
AU-23A STOL Aircraft	Nov 72
T-37 and A-37 Aircraft	Aug 72
C-123K Transports	Oct 73
F-5/RF-5 Fighters	Jan 74
Naval Patrol Frigates	Ongoing

U.S. military advisors have assisted in the counterinsurgency training of the Thai Armed Forces, although it has been our policy for some time to train Thai instructor cadre, who in turn conduct training of Thai personnel. The principal U.S. element involved in training Thai cadre, the U.S. Special Forces Detachment—Thailand, has recently been withdrawn, thereby terminating the major portion of our training efforts.

It has been the longstanding policy of both the Thai and the U.S. Governments, discussed in considerable detail during the Hearings before the Senate Subcommittee on U.S. Security Agreements and Commitments Abroad of the Foreign Relations Committee, 91st Congress, 1st Session (GPO 35–205, 1970), that the Thai have full responsibility for dealing with their internal security problems. Consequently, U.S. Mission policy directives, endorsed by the RTG, enjoin all U.S. personnel, military or civilian, from support or participation in Thai combat operations. Advisors may not accompany their units on tactical operations or participate in field training exercises below the battalion headquarters level.

Department of Defense annual operating costs of maintaining U.S. forces in Thailand during FY73 are estimated at $475 million. Department of Defense accounting records are not maintained to reflect total U.S. costs on an area basis. Operating costs, therefore, were estimated by using appropriate cost factors for each year and actual strength data as of September 30, 1973, and therefore,

1881

would not take into account variations in strength. Included are the costs of all military and civilian personnel located in Thailand and the cost of operating and maintaining facilities there. These estimates do *not* include indirect logistic and administrative costs for support from outside the country, nor do they include major procurement or military construction costs.

73. QUESTION: Please cite the language in the US-Ethiopian Facilities Agreement that provides the legal basis for the U.S. commitment of 900 military personnel and about 7500 dependents to be present in Ethiopia. What was the total cost of this force in each year during the period 1963–1973?

ANSWER: Article II and Article XIV, paragraph 1 of the US-Ethiopian Agreement, titled "Utilization of Defense Installations within Empire of Ethiopia," TIAS 2964, which entered into force on 22 March 1953, permits the USG to establish, control, use, and operate facilities in Ethiopia.

Article II—"The Imperial Ethiopian Government grants to the Government of the United States such rights, powers, and authority within the Installations as are necessary for the establishment, control, use, and operation of the Installations for military purposes."

Article XIV, paragraph 1—"The Government of the United States may bring into or take out of Ethiopia members of the United States Forces in connection with operations under this Agreement."

The maximum number of DOD personnel and dependents stationed at the Kagnew Communication Facility at Asmara, Ethiopia, at any one time was about 3600.

The Kagnew facility is being phased down by 30 June 1974 to a group of approximately 100 U.S. personnel, primarily civilian contractors.

The Operation and Maintenance (O&M) figures available beginning in 1968 for the cost of operating Kagnew facility are representative of prior years cost. The figures for 1968–1973 are as follows:

1968—$2.461M	1971—$2.821M
1969— 2.612M	1972— 2.509M
1970— 2.600M	1973— 2.278M

74. QUESTION: I understand that the mission of the MAAG Ethiopia is to supervise and administer the U.S. Military Security Assistance Program for Ethiopia. Please explain the specific parts of this military security program and how each of these parts of the program relates to the accomplishment of the principal U.S. national security objectives. Also please provide an explanation of the major duties performed by the MAAG headquarters and each of its Army, Navy and Air Force Sections, and a listing by type, quantity and date delivered in-country of the major items of U.S. equipment which MAAG advisors assist the Ethiopians in the using or maintaining. Are any U.S. military personnel stationed in Eritrea? If so, what are their duties?

ANSWER: Security assistance is an instrument of national policy which, put to full use, can effectively expedite the transition from the Cold War confrontations of the past to the generation of peace established by the United States as its goal for the future. The programs through which security assistance supports the defense efforts of other free world nations are essential elements of U.S. foreign policy and make a significant and substantial contribution to the successful implementation of that policy.

The grant military assistance materiel and training programs have helped the Ethiopian Armed Forces to maintain internal security and a self-defense capability, and permitted Ethiopia to make an invaluable contribution to free world collective security measures, as Ethiopia did in 1962 and 1967 in the case of the Congo.

President Nixon, in his report to Congress in February 1972, noted that one-third of the world's independent nations are in Africa and their voices and views are increasingly important in world affairs and African leaders are looking to the U.S. for help. Our SA contribution to Ethiopia is in part recognition of her importance to the U.S. and security of the free world. Our limited arms and training has helped to promote stability in that area of the world.

Major duties performed by MAAG Ethiopia are attached at Annex A.

Functional duties of sections of MAAG, and List of equipment are published periodically by USEUCOM and have been furnished the Commission.

In this country, U.S. military personnel do not advise the host military on the operation and maintenance of specific types of equipment furnished by the United States.

We do have about three officers and five enlisted military personnel stationed in Eritrea. The duties of these Asmara-based (Eritrean Province) MAAG personnel are largely associated with the supply, training, and related activities. In general, the duties of MAAG personnel stationed in the Asmara area are no different than the duties of other MAAG personnel as described at TAB A with the exception that US policy precludes MAAG personnel from participating in the planning or conduct of counterinsurgency operations in Eritrea.

76. QUESTION: Are there any U.S. Marine Corps personnel in the Cape Verde Islands? If so, what is the mission and assigned duties of these personnel?

ANSWER: No, there are no U.S. military personnel from any Service in the Cape Verde Islands.

77. QUESTION: What is the mission and principal duties of the 30 U.S. military personnel assigned to the U.S. military assistance group in Zaire? Are these U.S. advisors instructing the military forces of Zaire in counterinsurgency operations? Please cite the language of the agreement or accord, which provides the legal basis for the presence in Zaire of these U.S. military personnel and 80 accompanying dependents. Please explain specifically how this U.S. military presence in Zaire assists in the accomplishment of the two principal U.S. national security objectives. When does the Department of Defense envision that the assistance this military group provides to Zaire can be terminated?

ANSWER: There are only 20 U.S. military personnel assigned to the Military Mission in Zaire, which accounts for reductions made in recent years.

Mission and principal duties are attached at Annex A.

U.S. advisors are *not* instructing the military forces of Zaire in counterinsurgency operations. The language requested is quoted from the Agreement between the USG and the Republic of the Congo (now Zaire) on the "Furnishing of Equipment, Materials and Services" effected by exchange of notes at Leopoldville (Kinshasa) on June 24 and July 19, 1963 (Paragraph 4): "In connection with this agreement, the United States will send, and the Republic of the Congo will receive, a military mission. The Chief of Mission and his Deputy will receive the same treatment accorded diplomatic agents under the Convention on Diplomatic Relations signed at Vienna on April 18, 1961. All other personnel of the mission, including U.S. personnel temporarily assigned and auxiliary groups of U.S. military personnel who may be serving in, or transiting the Congo, will be accorded the treatment to which technical and administrative personnel of diplomatic missions are entitled under that Convention."

The nature and extent of the contribution the small U.S. military advisory mission in Zaire makes toward the accomplishment of the two principal U.S. national security objectives is as follows:

By performing its function of continuing advice as requested by the President and the Military Services of Zaire, the U.S. mission contributes by adding to the effectiveness in their use of U.S. military materiel previously furnished through grant aid and now through country purchases, and by guiding them in their selection of U.S. training, is enhancing the effectiveness of their forces in supporting internal security, its defense and stability.

By fostering this stability in Zaire, the largest in both population and size in middle Africa, U.S. security interests are served by precluding the extent of U.S. intervention that the internal situation required in the early 1960s, both directly and through the United Nations. The importance of this U.S. presence in Zaire is increased in light of the extent of Communist influence in the surrounding countries of Congo (Brazzaville), Tanzania and Zambia.

The possibility of reducing the number of personnel required in the ZAMISH is a matter of continuing DoD review. It is envisaged that the number of personnel will reach an absolute minimum by 1979, unless there is a Zairian request coupled with overall U.S. interests that would require a further judgment at that time. In the meantime, ZAMISH activities should ultimately be confined to facilitating Zaire's efforts to purchase valid requirements from the U.S. with its own funds.

78. QUESTION: Please cite the language of the agreement signed between the United States and Morocco which provides the legal basis for the presence in Morocco of 1000 U.S. military personnel and their accompanying 7600 dependents. What is the mission and principal duties of the U.S. military personnel assigned to MUSLO Morocco? What alternative has the Department of Defense considered for other ways to accomplish the operational function of the communication station in Morocco? Could this communications facility be accomplished by an afloat capability? What was the annual cost to the U.S. Government to maintain the U.S. military base and personnel in Morocco in fiscal years 1968–1973?

ANSWER: a. There are currently about 1000 military personnel stationed in Morocco accompanied by about 1000 military dependents. Our presence at the communications facilities was covered by an oral understanding.

b. MUSLO is a key element in the system through which military assistance and Foreign Military Sales requirements are identified and the resulting grant aid programs and sales arrangements are developed and implemented in a manner ensuring their maximum contribution to U.S. security objectives. This organization is not only responsible for efficient planning, administration and management of the in-country Military Assistance Program (MAP) and Foreign Military Sales (FMS) programs, but also performs other functions of equal importance to U.S. interests by:

—Providing knowledgeable Department of Defense representation in country to advise and assist the host country prior to and during major sales and delivery transactions involving a wide variety of complex military equipment produced by U.S. manufacturers.

—Advising and assisting the host country in the development of military self-reliance and a realistic force level which meets the country's security needs, is within its capability to maintain, and is also consistent with U.S. collective security interests.

—Establishing and maintaining rapport with the

military of the host country to provide channels of communications, dialogue, and influence which are valuable to the U.S. Government for diplomatic and commercial, as well as military, reasons.

—Monitoring the movement and delivery of MAP end items and continuous observation and review of their use by recipient countries to ensure proper utilization and disposal—a residual function which continues after termination of grant aid programs.

The specific assigned missions of this organization are as follows:

—With respect to security assistance, provide advice and assistance to the Chief of the U.S. Diplomatic Mission.

—With respect to security assistance, represent the Secretary of Defense with the host country's military establishment.

—Establish and maintain liaison between the U.S. defense establishment and that of the host country.

—Establish and maintain a relationship of mutual trust and confidence with the host country's military establishment.

—Consistent with DoD policies, country objectives and financial guidelines, develop security assistance plans and programs in coordination with other elements of the Country Team for submission to the Unified Commander.

—Assist U.S. Military Departments and their subordinate elements in arranging for the receipt, transfer, and acceptance of security assistance material, training, and other services for recipient countries.

—Monitor and report on the utilization by the host country of defense articles and services provided as grant aid, as well as personnel trained by the U.S.

—Assist the host government in the identification, administration, and proper disposition of security assistance material that is excess to current needs, including the reporting of (a) any dispositions made which are not in accordance with applicable understandings, agreements, and authorizations; and (b) the unauthorized transfer of defense articles of U.S. origin to third countries.

—Provide appropriate advisory services and technological assistance to the host country on security assistance matters. In less developed countries, provide advisory services, technical assistance, and training to develop a realistic capability to plan, program, budget and manage the military resources of the host country.

—Assist the host government in arranging for purchase of defense articles and services to meet valid country requirements through foreign military sales (FMS) and commercial sales.

—Assist the DSAA and the Military Departments, as requested, in carrying out FMS negotiations with foreign governments.

—Cooperate with and assist representatives of U.S. firms in the sale of U.S. defense articles and services to meet valid country requirements.

—When requested by appropriate authority, act as channel of communications for the Assistant Secretary of Defense (Installations and Logistics) (and the U.S. Defense Advisory to U.S. Mission NATO) regarding production and other logistical matters between the U.S. and the host government.

—When requested by appropriate authority, act as channel of communications for the Director, Defense Research and Engineering, regarding research and development matters between the U.S. and the host government.

—Keep the Assistant Secretary of Defense (International Security Affairs), Defense Security Assistance Agency, JCS, Unified Commands, and Military Departments, as appropriate, informed of security assistance activities in country.

c. While alternatives have been considered, sensitive political relations with foreign governments preclude an unclassified discussion of specific alternatives.

d. A study in 1971 indicated that a communications ship could not be economically reactivated. More importantly, a communications ship has only a fraction of the capability of a major communications station.

e. Annual cost to the U.S. Government to maintain the U.S. military base and personnel in Morocco in fiscal years 1968–1973 are shown in the Table.

79. QUESTION: In July 1970 the Fitzhugh Commission Report (page 57) recommended that the Joint U.S. Southern Command headquarters be abolished, yet there are still a dozen general flag officers and dozens of field grade officers assigned to this joint headquarters to command combat components which consist of less than 6,000 personnel. Please comment on what plans the Department of Defense has for eliminating this costly and unnecessarily large administrative and command overhead. What is the U.S. military requirement that dictates the continued operation in the Canal Zone of the Army, Navy and Air Force schools to train Latin American officers? After 20 years of operation, is it not reasonable to expect that these training schools can now be closed, since Latin American Armed Forces should by now have a sufficient cadre of trained personnel to conduct their own training?

ANSWER: After the 1971 review of the Unified

	68	69	70	71	72	73
NAVCOMMSTA	RMS not in					
MPN	effect	2.884M	2.868M	3.443M	3.493M	3.659M
O&MN	1.321M	1.347M	1.446M	1.591M	1.938M	2.096M
NAVTRACOM						
MPN		CINCUSNAVEUR Sponsored Activity			3.349M	3.476M
O&MN		68–71 Funding Info not Available			2.192M	2.269M

Command Plan was submitted, it was decided at the highest level that the U.S. Southern Command should be retained as one of the U.S. Unified Commands. That decision was largely based on the fact that the Command was primarily responsible for Canal defense and was considered to be performing essential Department of Defense functions from a centrally located site which was convenient to both the U.S. and Latin American military establishments. Rather than considering the Command as a costly and unnecessarily large administrative command overhead, it has been looked at by the Department of Defense as essentially an economy-of-force measure since the small number of personnel who man the headquarters perform a significant number of varied functions simultaneously. The approximate strength of Headquarters USSOUTHCOM is only 180 personnel. If the Department should find in the future that retention of the U.S. Southern Command is no longer necessary, desirable, or in the best interest of the U.S., an appropriate recommendation will be made to the President concerning its future disposition.

A comprehensive review of all management headquarters in the Department of Defense is presently being conducted at the direction of the Secretary of Defense. The current phase of this review is concentrated on the Unified Commands. In a related action, the Army recently announced a decision to phase out its component headquarters, U.S. Army Forces Southern Command (USARSO).

As is stated above and worthy of repetition, the defense of the Canal Zone is the U.S. Southern Command's major responsibility and is the one to which the majority of assigned forces is dedicated. Forces available for this mission are provided through Service component commands and stateside based resources. Under current command arrangements, the Army component, U.S. Army Forces Southern Command (USARSO) is commanded by a U.S. Army Major General and is primarily responsible for providing ground combat and support forces for the defense of the Panama Canal. In performing this mission, USARSO is required to coordinate its planning and training with the Canal Zone Government and the other Service components in order most effectively to be prepared to protect installations vitally important to the operation of the strategic international waterway. The Navy component, U.S. Naval Forces Southern Command (USNAVSO), is commanded by a U.S. Navy Rear Admiral and is the smallest of the components. Though it is small, the geography of the Isthmus emphasizes the requirement for naval cognizance, since the Panama Canal connects the world's largest bodies of water. The Commander of USNAVSO is the principal advisor to the Commander in Chief of USSOUTHCOM on naval matters and, in his second role as Commandant of the 15th Naval District, is also responsible for the support of U.S. fleet units and for the support of transient free world naval units, including those of Latin American navies. In his third principal role as the Commander of the Panama Sector, Caribbean Sea Frontier, he answers to Commander in Chief, U.S. Atlantic Fleet, and is responsible for planning to control such naval forces as may be assigned to him in time of war. The air component, U.S. Air Forces Southern Command (USAFSO), is commanded by a U.S. Air Force Major General who is responsible for advising the Commander in Chief of USSOUTHCOM on and overseeing the execution of those portions of the USSOUTHCOM mission which require USAF support. The missions of USAFSO include: air defense of the Canal Zone and tactical air support of USSOUTHCOM and land and sea forces in time of war, air portions of disaster relief and civic action projects, and search and rescue (SAR) responsibility for U.S. aircraft over all of Central and South America. Finally, it should be stated that the forces located in the Canal Zone are considered to be the minimum for defending the vital installations necessary for the operation of the Canal and to secure the airheads necessary for CONUS based contingency augmentation forces to land should their assistance in the defense of the Canal be required.

Concerning our military-operated schools in the Canal Zone, the training provided has been an effective instrument for improving the armed forces

of participating nations. The nature of this training has shown a noticeable increase in sophistication, indicating that the participating nations are conducting their own basic courses where possible. The scope and curricula of the schools change continuously to meet the varying needs of the Latin American forces. The training is designed especially for the Latin American students in the Spanish language and is especially suited to the smaller countries which do not have the capability to conduct extensive or sophisticated training on their own. In fact, it would be impossible or completely uneconomical for the smaller countries to conduct all of the courses they may require with perhaps only one student per course during one, two, or even five years. When the Canal Zone schools were begun, it was anticipated that the schools' courses would be conducted as long as there was a valid requirement for them. The Canal Zone schools promote regional cooperation, focus on civic action aspects of the armed forces, develop pro-U.S. attitudes through exposure to our customs and culture, and foster a sense of fraternity and comradeship among the graduates. It is significant to note that approximately 170 graduates of the schools are heads of government, cabinet ministers, commanding generals, chiefs of staff and directors of intelligence. Among these is BG Omar Torrijos, Chief of the Government of Panama. The Department of Defense believes that the schools decidedly support the aims of U.S. policy in the area.

80. QUESTION: I understand that the mission of the U.S. Army's 193d Infantry Brigade is to defend the Panama Canal from attack.* Please state the external ground forces which are considered to pose a "threat" to the ground security of the Panama Canal. What is the mission and principal duties of the U.S. Military Group Panama? Please indicate the type, quantity and date of delivery in-country of major U.S. weapons furnished to the Republic of Panama under the U.S. Military Assistance program in fiscal years 1971–1973.

ANSWER: U.S. Southern Command's Army component, USARSO, is primarily responsible for providing ground combat forces for the defense of the Panama Canal. USARSO's chief asset for this mission is the 193d Infantry Brigade which consists of three infantry battalions and supporting elements. Of the three infantry battalions, one is mechanized. These are considered to be less than the minimum forces required for the immediate and temporary defense and protection of the installations and critical areas which are vital to the operation of the Canal. Additional personnel in the Canal Zone assigned to the schools and other activities must augment the brigade in order to allow for the minimum acceptable defense of these vital installations and critical areas. If there were to be a protracted requirement to protect the installations/areas or if there were an escalating threat to the Canal from any of a number of situations, the forces would require augmentation from elements stationed in the CONUS.

The Canal is vulnerable to a wide variety of actions of a purely military nature and an equally wide variety which could be carried out by a determined individual or group of individuals in the form of sabotage, clandestine mining, rioting, terrorism, or guerrilla activity. The forms of hostile attack to which the Canal is subject are limited only by the imagination of the would be attacker. There are, however, only a limited number of vital installations and critical areas which must be protected in order that the Canal may continue to operate and so that augmentation forces may be landed in the Canal Zone. It is these absolutely essential facilities and areas which are protected by the forces present in the Canal Zone. Anything of a greater magnitude would require reinforcements from CONUS.

The USMILGP in Panama is made up of nine personnel. It is organized into the normal three Service Sections with small Air and Naval Sections commensurate with the size of the air and naval components of the Panamanian *Guardia Nacional.* The mission of the MILGP is similar to many others in the smaller countries of Latin America. Its principal duties are to support the U.S. Ambassador to Panama by providing him with advice concerning military and other defense related matters as appropriate and as requested; to establish liaison with the Panamanian security officials on a regular basis; to provide the *Guardia Nacional* with the advisory service desired (this function plays a great part of the MILGP effort); and to administer the modest MAP program in Panama.

The major items of equipment delivered to Panama during the period FY 1971–1973 under the Military Assistance program have been furnished to the Commission.

81. QUESTION: For each of the following U.S. MAAG/Mission/MILGPs: Please indicate the mission and specific duties of the U.S. military personnel currently assigned, the type, quantity, and date of delivery in-country since FY 1970 of the major weapons and items of equipment furnished under the U.S. military assistance program, weapons purchased through military sales agreements negotiated by the Mission/MILGP, the date that each Mission/MILGP was established, and if possible, specific examples of how each Mission/MILGP has contributed to assisting the host country in developing a capability to defend themselves from attack

(*Wall Street Journal, Jan. 10, 1974, "The Good Life" by Richard J. Levine)

and protecting their sovereign rights to independence and self-determination.

MILGP Argentina
MILGP Bolivia
MILGP Brazil
MILGP Chile
MILGP Colombia
MILGP Costa Rica
MAAG Dominican Republic
MILGP El Salvador
MILGP Guatemala
MILGP Honduras
MILGP Paraguay
MAAG Peru
MILGP Uruguay
MILGP Venezuela

ANSWER: Except for the MILGPs/MAAGs in Argentina, Brazil, Chile, Colombia, Costa Rica, Peru and Venezuela which have no MAP material programs, the missions of these organizations are essentially the same as attached at Annex A.

The missions of the organizations without MAP material programs (i.e., Argentina, Brazil, Chile, Colombia, Peru, and Venezuela) are essentially the same with this exception.

In Costa Rica the very small MILGP has more limited functions than the other MILGPs.

Our military presence in Latin America originated under Public Law 247, enacted by the 69th Congress in 1926. (In Brazil a Navy mission had already been established in 1922.) By 1942, U.S. military missions had been established in all South American countries except Paraguay (1943) and Uruguay (1951). By 1945 service missions were in all Central American countries except El Salvador (1947) and Nicaragua (1952). The service missions were established pursuant to bilateral agreements with each country which define the purpose, rights, and duties of mission personnel with respect to the host military. A summary of these agreements have been furnished the Commission.

With the advent of the military assistance program in the 1950s, bilateral military assistance agreements were signed to define relationships with respect to that program (see Annex D for dates of agreements with each country). Functions associated with the military assistance program—essentially MAAG duties—were assigned to the service missions in addition to their other responsibilities under the mission agreements. The organization of the service missions for the purpose of discharging these MAAG duties differs only between those in countries with a MAP–Materiel program and those in the other countries. (The MAP–Materiel countries are: Bolivia, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, and Uruguay.) The general and specific missions for the former are discussed above. In the Dominican Republic and Peru there are no service missions, only the MAAG organizations.

A list of equipment furnished under the Military Assistance Program has been furnished the Commission.

Security Assistance and US military representation in Latin America is an important factor in developing and sustaining bilateral relationships and an improved sense of community between the United States and the other nations of the hemisphere. This military relationship is historic and one which is desired by the Latin American governments. In most of the countries, they displaced European missions, giving the US a position of dominance in the military sphere that contributed greatly to the formulation of our oldest and, to date, most durable regional collective security agreement—The Rio Pact of 1947. Our military missions provided a tangible signal of the US commitment during the early Cold War days, when extra-hemispheric aggression was perceived as a serious threat. Our presence and programs made available to the Latin Americans both equipment and advice to confront that threat. When Communist insurgency became the primary threat in the late 50s and early 60s, our professional military relationships, professional military advice and military programs improved the capabilities of the Latin American military forces to control violent extremism and insurgent activities. This has been particularly true in Bolivia, Uruguay, Guatemala, Colombia, Dominican Republic and Venezuela, where the success of counterinsurgency efforts by the armed forces of the respective nations have reestablished an environment whereby their governments and people can pursue their legitimate sovereign rights and exercise their independence in self-confidence.

Our military missions are involved now in providing professional advice, cooperation and assistance in the structuring and management of modernizing armed forces perceived by the host governments to be necessary to sovereignty-keeping and national independence. Military capabilities and degrees of self-sufficiency vary widely among the armed forces of the different countries, but all continue to perceive the need for an institutional link to the armed forces of a major world power. It is in the US interest to fill the latter position, and our military missions provide the link.

US military advice and professional relationships have assisted Latin American countries to establish a degree of security which is conducive to orderly social development and nation building.

82. QUESTION: Please explain the mission and functions of the Joint Brazil-U.S. Defense Commission and the Joint Brazil-U.S. Military Commission.

1512

Please explain the command and control channels established for these joint commissions by the bilateral agreement between the U.S. and Brazil. What is the relationship between these bilateral commissions and the U.S. Embassy and the MILGP in Brazil? How many U.S. military personnel are assigned to the U.S. Sections of these two joint Commissions? How many to the MILGP and the Defense attaches office? What is the total amount of appropriated funds allocated to the operation of these commissions?

ANSWER: U.S. military representation in Brazil had its genesis in the establishment of a U.S. Navy Mission in that country in 1922. The special relationship which has existed between the military services of the two countries since that time was expanded and strengthened during World War II when Brazil fought at our side in Europe and through a variety of mutual defense and other cooperative agreements ranging from mutually beneficial mapping and charting projects to the 1942 establishment of the joint commissions in question.

Both commissions are bilateral organizations for international cooperation, with delegations from both countries on each commission serving as the principal agencies from each country responsible for developing studies and recommendations on bilateral matters of a military nature. Thus their mission is to facilitate joint military planning between the two countries; review and formulate recommendations relative to existing military agreements; and to recommend actions attendant to mutual defense requirements. To fulfill these functions, the two commissions perform a variety of tasks under the general category of military cooperation.

The Joint Brazil-U.S. Military Commission (JBUSMC) is the principal agency in Brazil for collaboration between military authorities of the two governments on matters dealing with common defense; standardized training methods; liaison channels for the exchange of technical data; standardization in equipment, organization, administration, supply and maintenance; coordination of Brazilian training in U.S. schools; the assignment of U.S. military personnel to perform the above functions in Brazil; and such other matters as may be requested by competent authority.

As the principal joint agency representing bilateral military matters in Washington, the Joint Brazil-U.S. Defense Commission (JBUSDC) coordinates with JBUSMC on matters of instruction; studies; liaison; procurement; channels of communication between the respective Services of the two countries; and other matters requested by competent authority.

JBUSMC answers to the Brazilian Armed Forces General Staff or to military authorities designated by them on matters dealing with Brazilian forces and activities, and to the United States Joint Chiefs of Staff (coordinated through JBUSDC) on U.S. military interests. JBUSDC, in like manner, answers to the U.S. Joint Chiefs of Staff on U.S. matters and, through JBUSMC, to the Brazilian Armed Forces General Staff on Brazilian matters.

This organizational arrangement, with delegations from each country on both commissions, is unique in the hemisphere. Primarily as a means of standardizing command and organizational relationships through intermediate levels to the Department of Defense, our military presence in Brazil also operates under the functional arrangement of a United States Military Group with a Command Section; a Joint Plans and Operations Section; and individual Service Sections. U.S. military personnel assigned to JBUSMC are the same as those assigned to the U.S. Military Group. The Commander, U.S. Military Group, is also the Chief, U.S. Delegation, JBUSMC. As with U.S. Military Groups throughout the hemisphere, the U.S. Military Group Brazil (U.S. Delegation, JBUSMC) functions in consonance with policy determinations of the U.S. Embassy as an element of the Country Team. JBUSMC and JBUSDC are instruments of our bilateral agreements with Brazil, and those agreements constitute our primary terms of reference. The U.S. Military Group structure is superimposed on the U.S. Delegation to JBUSMC as a matter of organizational convenience to the U.S.

There are presently 40 U.S. military personnel assigned to the U.S. Delegation, JBUSMC. No U.S. military personnel have as their primary duty the accomplishment of JBUSDC functions; these are accomplished as additional duties, additive to representation on the Inter-American Defense Board in Washington.

The Defense Attache Office in Brazil presently has 13 U.S. military personnel assigned.

Funds appropriated for functions of the U.S. Delegation, JBUSDC, amount to $2,000 per year. Estimated appropriated fund requirements for the U.S. Delegation, JBUSMC, for fiscal year 1974 are approximately $1.88 million (actually represents U.S. Military Group cost).

83. QUESTION: Please explain the mission and purpose of the Inter-American Defense Board and the Inter-American Defense College and the military justification for the number of senior U.S. officers assigned to them. List the substantive accomplishments of the Inter-American Defense Board over the past 10 years which have contributed to U.S. national security objectives. How is the course curriculum of the Inter-American Defense College formulated and what agency approves this curricula? Please summarize the major objectives of

the course of instruction taught at the Inter-American Defense College; does this course stress counterinsurgency operations? What is the total cost to the U.S. Government for the College (including facilities, operation and maintenance, pay and allowances)?

ANSWER: The mission of the Inter-American Defense Board (IADB) is to study and recommend to the governments of the American States the measures necessary for the defense of the hemisphere. The purpose of the IADB is to act as the organ of preparation and recommendation for the collective self-defense of the American Continent against aggression, and to carry out, in addition to the advisory functions within its competence, any similar functions ascribed to it by the Advisory Defense Committee, established in Art. 64 of the Charter of the Organization of American States.

The IADB is an international military organization made up of military representatives from 19 American Republics (excluding Cuba). The Board was established in 1942 by Resolution XXXIX of the Third Meeting of Consultation of Ministers of Foreign Affairs for the purpose of making recommendations to the respective governments on the measures necessary for the defense of the Western Hemisphere.

Resolution XXXIV of the Ninth International Conference of American States, Bogota, 1948, confirmed the consensus in support of the Board by providing that the Inter-American Defense Board should continue its activity of "preparation for collective self-defense against aggression" for an indefinite period, until two-thirds of the American States should agree that it is no longer needed. The resolution also authorized the Board to promulgate its organic and operational regulations, within the limits of its advisory function. Pursuant to this charter the IADC was established in 1962.

The IADB regulations, juridically based on Resolution XXXIV of the Ninth International Conference of the American States, specify that the following offices will be held by flag/general officers of the state in which the IADB and/or IADC are physically located:

The Chairman of the IADB

The Director of the IADC

The Director of the International Staff

The IADB is currently situated in Washington, D.C.; thus all of the incumbents listed are from the United States. Officers listed maintain official Board relations with the nations of the hemisphere through the Chiefs of Delegation (usually of flag rank) of each state and because of their international identification, are motivated by an allegiance to the inter-American community as a whole as well as to the United States Department of Defense. In this capacity they have access and are exposed on a continuing basis to the highest executive, diplomatic and military authorities of the Western Hemisphere. Any modification in the upper levels of the manning structure, in light of the prestige in which the Board is viewed, would be interpreted as a lessening of US interest in Latin America and a withdrawal from responsibility established through international agreements.

The Chairman of the IADB is a US three-star, service rotating position. The basic functions of the Chairman are to represent the Board before the governments of the American States and other related agencies, conduct the activities of the Board, convoke and preside over official meetings of the Council of Delegates, and perform such other duties as are authorized by the governing body, the Council of Delegates. In carrying out these functions, the Chairman has represented the Board at the highest national levels; for example, on the Board's trips to Latin America he has had occasion to call on Presidents of the American Republics and on Ministers of Cabinet rank. Further, the Council of Delegates is made up of senior military officers of the Americas; at present it includes 2 three-star, 5 two-star, and 17 one-star officers. The nature of the Chairman's functions and the high level at which he represents the Board require that the position be filled by a U.S. three-star officer.

The Director of the Inter-American Defense College (IADC) is a U.S. two-star, service rotating position. The IADC is currently situated in Washington, D.C., and based on the regulation of the Inter-American Defense Board, its director is a general/flag officer provided by the host country. The Director is responsible for guiding and coordinating all of the activities of the college and for representing the interests of the college before the Council of Delegates, Inter-American Defense Board. The Director is also charged with establishing contact and maintaining effective collaboration with other senior service schools in the hemisphere which are invariably headed by a general/flag officer. The Inter-American Defense Board Regulations further specify that two other supervisory positions at the college, the Chief of Studies and Vice Director, will be manned by general/flag officers assigned from member states other than the host country. Based on the above consideration it would not be appropriate for the USG to assign an officer of lower rank to the position of Director.

The Director of the International Staff, IADB, is a U.S. one-star, service rotating position. The Director of the Staff is responsible for guiding and coordinating the activities of the IADB military staff, as prescribed by the Council of Delegates. The Staff is the technical working body of the Council and is composed of senior field grade offic-

ers of the armed forces of member nations. Staff tasks include advising, studying, planning and recommending solutions to the problems of hemispheric defense in the fields of planning, intelligence and logistics. The complexity and nature of the Staff's functions, as well as the level at which it operates, require that the Director be a brigadier general.

The substantive accomplishments of the IADB include:

a. Preparation and frequent updating of the General Military Plan with its Annexes and associated supporting documents. This is the only multinational plan which establishes the basis for military cooperation and coordination within the hemisphere.

b. Preparation of a series of important studies relating to hemispheric security. These have included: contribution of the armed forces in economic and social development (civic action); standardization; civil defense; search and rescue procedures; collective air defense; guerrilla and counter-guerrilla warfare.

c. Creation (in 1962) of the Inter-American Defense College and continual supervision of the College's curriculum and operations.

The IADB is not a military alliance in the sense of NATO or SEATO since no forces are assigned. Its function is that of recommending and advising. However, the Board is a catalyst which permits the combined military forces of the Western Hemisphere to consider the means for and make recommendations for applying measures ratified through the Charter of the Organization of American States and the Inter-American Treaty of Reciprocal Assistance.

The IADB is the only permanent, full-time organ charged with planning for the common defense of the Hemisphere. The key US officials assigned play a significant role in guiding the preparation, quality and depth of resulting documents. The stature of these officers is important in enabling them to work not only with their Latin American counterparts at the Board, but also with high levels of military authorities of the member nations. By way of additional comment, both the Inter-American Defense Board and the Inter-American Defense College provide an excellent opportunity for military personnel from Latin American nations assigned to these organizations to observe the US democratic processes at work and provide exposure to the way of life in the US.

The Inter-American Defense Board is the oldest cooperative military planning group that exists in the Free World. Since its inception it has been viewed by the Latin American military as a serious, essential and effective organization. Participation has been solemn, intent and universally continuous. A US presence, particularly in those positions established by international agreement, is essential to reflect the importance with which the United States views its relations with its neighbors to the South. Any Latin American perception of a lessening of US interest would adversely affect US-Latin American relations.

The mission of the Inter-American Defense College (IADC) is to provide a military institution of high-level studies devoted to conducting courses on the Inter-American System and the political, social, economic and military factors that constitute essential components of inter-American defense, in order to enhance the education of selected armed forces personnel and civilian government officials of the American Republics for carrying out undertakings requiring international cooperation.

The purpose of the IADC is to: organize and conduct the courses that may be decided on by the Council of Delegates of the IADB in accordance with the purposes of each of those courses; develop the habit of teamwork, providing an atmosphere of full understanding among those participating in the activities of the college, in order to make possible an effective collaboration among the several American countries in the study and understanding of the problems affecting continental defense; and establish effective collaboration with similar institutions, both in the Americas as well as in other countries.

The Director of the IADC, with input from the Department of Studies, develops a curriculum for each course, taking into account: the directives issued by the IADB Council of Delegates; experience gained in previous IADC classes; the advice and guidance of the Advisory Council of the IADC; and the latest developments in the world situation. The Director of the IADC submits the proposed annual curriculum to the IADB Council of Delegates for approval.

The major objectives of the course of instruction are to: foster among the participants a favorable attitude toward work in undertakings of international cooperation, particularly those related to the security and common defense of the Continent; impart a deeper knowledge of the Inter-American System in its political, economic, social and military aspects, within the framework of the world situation, as essential components for the study and understanding of the problems affecting the defense of the Continent; develop techniques for the collective planning at the highest international level in order to achieve greater unity in matters of doctrine relating to the common defense of the hemisphere; and promote friendship and unity among the participants of the various countries with a view toward strengthening the spirit of American solidarity.

Counterinsurgency operations are not included in the IADC curriculum. Rather, counterinsurgency

as a concept is addressed as one aspect of the overall political, economic, social and military problems considered in the present world situation.

The building which presently houses the college at Fort McNair, Washington, D.C., was turned over by the US Government to the Inter-American Defense Board for that purpose in 1962. Cost of utilities, other operating expenses and salaries of civilian employees are paid from and funds supplied by the Organization of American States. Certain relatively minor maintenance support common to all facilities at Fort McNair is provided without charge to the IADC. Total identifiable direct cost to the US involves pay and allowances of the US military personnel assigned to the faculty and staff, which at this time amounts to approximately $520,000 a year.

84. QUESTION: The Military Manpower Requirements Report for FY 1974 indicates that 68% of the FY 1974 Department of Defense total active military force will be serving as officer or non-commissioned officers/specialists. Please provide a specific explanation of why it is necessary for the active armed forces to maintain such a large percentage of executive and supervisory personnel. What percentage of these officers and non-commissioned officers are assigned to authorized combat command and leadership positions? What percentage to headquarters staff and administrative assignments? What percentage to support and communication duties?

ANSWER: To classify all officers and non-commissioned officers as executive and supervisory is an erroneous assumption. The more senior the individual in each of these categories, the more likely that the individual is in fact supervisory. However, many officers and senior enlisted personnel are specialists and technicians whose grades are more reflective of their skills, training and experience than it is a reflection of their supervisory responsibilities. Skills that have requisite baccalaureate or higher education level are naturally classified into officer grades. The pay levels and prestige of these grades are necessary to enable the military to compete for these skills. The obvious example is doctors and dentists. A lieutenant colonel surgeon would perform his duties at the operating table. The fact that he may supervise some nurses and medical corpsmen in the process is incidental to his actual professional mission. To illustrate the magnitude of this, the Army officer corps at the end of FY 1974 will contain 92,500 commissioned officers. If the technically oriented officers were subtracted from the Chemical Corps, Engineer Corps, Finance Corps, Judge Advocate General, Chaplains Corps, Medical Corps, Dental Corps, Veterinary Corps, Medical Service Corps, Nurse Corps and Medical Specialist Corps, approximately 30% would be excluded. Admittedly, many personnel in this technical group would be normally performing supervisory functions. However, many of the personnel in the other combat oriented group are also performing technical duties. This group contains many officers working in communications and electronics; transportation; ordnance, to include nuclear devices; police, intelligence and logistical support.

Similarly, on the enlisted side, personnel in the top six grades comprise non-commissioned officers who have supervisory responsibility and many others who are skilled technicians and specialists who operate and maintain complex equipment but do not supervise. Included in this latter group are large numbers of first-term personnel in grade E-4 (28%) who are technically designated as NCOs but are experienced only to a journeyman level of skill. Among the Services, only the Army differentiates between NCOs and specialists in their rank structure.

In response to that part of question No. 84 pertaining to the distribution of officers and non-commissioned officers, the following table is provided. Data is not available to answer directly in the categories requested. This table is derived from the categories shown in the FY 75 Manpower Requirements Report. There are some leadership positions in the non-combat categories listed and similarly there are some direct support type positions in the combat and leadership category.

85. QUESTION: Please provide your comments on what actions the Department of Defense is preparing to take during FY 1975 to increase the overall combat productivity of U.S. military manpower. Please comment on the specific steps you plan to take during FY 1975 and FY 1976 to increase the percentage of each service's end-strength manpower assigned to combat skills, intermediate combat units and major combat units.

ANSWER: The FY 1975 budget includes several new initiatives in manpower utilization and the continuation of several other programs previously in effect.

The new initiatives include vigorous efforts to adjust the combat-support mix so that increased combat capability is realized through support efficiencies. Headquarters have been studied and reduced, both to aid in increasing combat capability and to simplify and shorten the command lines of communication. Other support functions have been reduced as well. As a result, important additions to the combat-oriented forces are possible in FY 1975. For example, the Army will add 1/3 of a division force and a number of separate combat units. The Air Force will raise the crew ratios in its strategic airlift squadrons and will assign additional maintenance personnel, with the result that the wartime lift capability will be raised by 25 percent.

DISTRIBUTION OF OFFICERS AND NON-COMMISSIONED OFFICERS (PERCENT OF 30 JUNE 1974 END STRENGTH)[1]

Manpower Category	*Officers as a % of Total Officers*[2]	*NCOs as a % of Total Enlisted*	*Officers & NCC as a % of Total Strength*[3]
Combat Command and Leadership			
Strategic Forces	6.5	4.1	4.4
General Purpose Forces	26.7	20.1	21.0
Mission Support Forces—Command	6.1	1.3	2.0
Sub-Total	39.3	25.5	27.4
Support and Communications			
Auxiliary Forces	9.0	4.5	5.1
Mission Support Forces (Less Command)	8.3	8.6	8.6
Central Support Forces (Less Command)	24.3	8.0	10.3
Sub-Total	41.6	21.1	24.0
Headquarters Staff			
Central Support Forces Command	6.3	.8	1.6
Individuals			
(Transients, patients, students, etc.)	12.8	2.9	4.3
Total	100.0	50.3	57.3

[1] May not add due to rounding.
[2] Includes commissioned and warrant officers.
[3] Total strength excludes cadets and midshipmen.

Other ongoing programs include the continued review and identification of military spaces not essentially requiring military incumbents that can be civilianized. Over 135,000 such spaces have been so converted since 1966. Additionally, every function and every element of the force structure will continue to receive close scrutiny to determine whether the function or force unit is required and effective. As presented in the FY 1975 budget, we have identified reductions in headquarters, intelligence and security, base supporting activities, training, air defense units and some B-52 bomber squadrons. These reviews and adjustments will continue in future years, even beyond FY 1976.

The main objective of the Defense Department is to obtain the maximum amount of combat capability, with minimum but essential support activities, from a relatively fixed manpower level. This issue is further addressed in the answer to the next question.

86. QUESTION: Please furnish your comments on what specific steps the Department of Defense plans to take within each service during FY 1975 toward reducing the overall number of military personnel assigned to command headquarters and support duties. What is the estimated percentage of the total FY 1975 DoD personnel force that will be assigned to command headquarters and support duties?

ANSWER: The Department of Defense has taken significant initiatives to increase combat structure and combat readiness by reductions in the support establishment, including headquarters, and by eliminating defensive strategic forces which are of marginal value to our overall security. These major force changes have been emphasized by Secretary Schlesinger in his Annual Report and his testimony to the Congress.

The attached chart indicates the percentage of total FY 1975 DoD military manpower that is within each manpower category and the changes made in those categories between FY 1973 actual end-strengths and those planned for FY 1975.

The shift of manpower from "support" to "combat" affects each of the Services, and is explained in more detail in the *Manpower Requirements Report, FY 1975.*

About 2.5% of the total military manpower authorization for FY 1975 represents manpower that will be assigned to management headquarters. In addition to the actions already taken toward reducing the overall support manpower including that in

DOD MILITARY FORCE CHANGES
(END—STRENGTH, THOUSANDS)

Manpower Category	FY 1973 Actual		FY 1975 Planned		Change
	Military Manpower	% of Total	Military Manpower	% of Total	Military Manpower
Combat Forces [1]					
Strategic Forces	124	6%	115	5%	−9
General Purpose Forces	909	40%	929	43%	+20
Subtotal	1033	46%	1044	49%	+11
Support Forces [2]					
Auxiliary Forces	162	7%	139	6%	−23
Mission Support Forces	342	15%	311	14%	−31
Central Support Forces	389	17%	346	16%	−43
Individuals	326	14%	312	14%	−14
Subtotal	1219	54%	1108	51%	−111
Grand Total	2252	100%	2152	100%	−100

[1]There is no absolute method of delineating "combat" forces from "support" forces. The strategic and general purpose forces manpower categories are used here to represent combat forces for comparison purposes only.

[2]These categories include such elements as Intelligence, Research and Development, Centrally Managed Communications, Base Operating Support, Command, Individual Training, and Trainees and Students.

headquarters activities, the Department of Defense is now in the process of reviewing headquarters staffing. As a result of this study, decisions have been made to reduce total military and civilian manning in headquarters by over 14,000 spaces, of which about 5,000 spaces are reductions beyond those shown in the President's FY 1975 Budget. The review is continuing, with emphasis now being placed on the headquarters of Unified Commands.

87. QUESTION: What is the total number of DoD personnel who will be assigned to transient status during FY 1975? What is the total estimated cost for this transient manpower? How many permanent change of station (PCS) moves among the total Department of Defense manpower force do you estimate will be required in FY 1975? How does this estimate compare with the total PCS moves made during FY 1974? What is the estimated overall cost of the FY 1975 PCS moves? Please comment on what actions you propose to take to cause the services to restrict and reduce the number of PCS moves projected for FY 1975.

ANSWER: The total number of military personnel estimated to be in a transient status during FY 1975 is 88,000. Estimated total cost for this transient manpower during FY 1975 is $950 million, based on average rates.

The total number of permanent change of station (PCS) moves required among the total Department of Defense manpower is shown in the following table:

DEPARTMENT OF DEFENSE
PERMANENT CHANGE OF STATION TRAVEL PROGRAM [1]
(MILITARY MEMBER MOVES IN THOUSANDS)

Type Move	FY 73	FY 74	FY 75
Accession Travel	561.8	485.4	503.0
Training Travel	152.2	143.2	133.2
Operational Travel	176.7	195.9	172.6
Rotational Travel	522.9	514.6	514.4
Separation Travel	615.7	556.5	506.4
Travel of Organized Units	15.7	29.0	18.7
Total PCS Moves	2045.1	1924.6	1848.3

[1]Excludes accession and separation moves of cadets of the Service military academies.

The estimated overall cost of the FY 1975 PCS move Program is $1,576 million. PCS moves are based on firm military requirements, the goal being to ensure the maintenance of necessary skill balances and force readiness. An equitable sharing of arduous or hazardous duty is also an important consideration in managing the PCS move program. Numbers of accession, separation, and training moves (over 60 percent of total PCS moves) are essentially a direct function of untrained individuals entering the force to fill vacancies and of individuals leaving upon completing tours of obligation. It is in this manner that we attempt to maintain our planned force levels, and we cannot materially reduce the number of moves unless we are able to

1899

reduce the number of personnel losses and accessions. A fourth category, organized unit moves, is a direct function of the number and sizes of units which are being relocated for national security reasons or to gain greater efficiency.

Operational and rotational moves, on the other hand, are areas where it is possible to influence to some degree the frequency of moves between duty units within the constraints of acceptable manning levels. In this regard, continued emphasis is being placed on voluntary tour extensions. Also, two new initiatives were included in the FY 1975 budget request which would, if approved, ultimately lead to further improvements in tour lengths. One proposal would eliminate the restriction on junior enlisted personnel stationed overseas and accompanied by their dependents, who are not now eligible for either travel or transportation (including station) allowances for their dependents at the "with dependent" rate. They would receive these allowances, however, only when they can get command sponsorship, a status that normally requires a longer tour commitment. The second related proposal would discontinue after July 1, 1974, payment of station allowances at the "without dependent" rate to all personnel overseas with unsponsored dependents, unless they agree to remain for the longer accompanied tour and thereby become eligible for the "with dependent" rate.

88. QUESTION: Please provide information on the actions which you plan to take to reduce military grade creep. What consideration is being given to returning our active duty officer corps to the pre-Korean War concept of serving in their permanent, rather than temporary, rank during peacetime?

ANSWER: The DoD exercises firm and positive control over both the total number of officers and enlisted personnel as well as over the individual program elements from which these personnel requirements are derived. This is done on an annual basis as part of the Program Budget Decision (PBD) process with a view to maintaining requirements at the minimum level consistent with military readiness. In almost every year the numbers finally authorized are below the requirements initially identified and submitted by program sponsors and the Services at the beginning of the budget planning cycle.

Under our normal PBD procedure, the number of officers authorized for the Services has been responsive to the changing requirements associated with Vietnam as well as overall national security objectives and related force structure changes. The DoD officer force buildup for Vietnam (1965–1969) was 80,141 or an increase of 24%. These forces have undergone a substantial reduction since the Vietnam peak and are programmed in the FY 75 budget to be reduced to 293,677. This is an aggregate decrease of over 125,000 officers since 1969, or a 30% reduction. Our efforts to reduce senior personnel in recent years have been overshadowed by the large annual reductions to the total force. This year we have initiated two new actions which will concentrate on senior officer grades. These are of course, the ongoing headquarters review and our proposed legislation to enable the Services to involuntarily retire officers in the grades of colonel/captain and lieutenant colonel/commander. The Department of Defense intends to further reduce the number of senior officers in these grades in fiscal year 1975, commensurate with reduced force levels and planned realignments within headquarters components.

With respect to that part of the question dealing with permanent versus temporary rank, it is assumed that the "pre-Korean War concept" cited refers to the permanent promotion provisions (Title I) of the Officer Personnel Act of 1947. During World War II the regular components were augmented by thousands of reserve and temporary officers. Permanent promotions were suspended and all promotions were temporary promotions made under wartime authority. At the end of the war there was rapid demobilization, after which it was intended to establish all regular forces. A transition period of ten years was envisioned, during which reserve and temporary officers would be augmented into the regular components as the size of the post-war forces stabilized. In the interim, it was intended to meet deficiencies with reserve and temporary officers. Accordingly, the Officer Personnel Act provided for two basic situations: one in which all personnel on active duty are regular, and another in which reserve and temporary officers also would be on active duty.

In the first "all-regular" situation, only permanent promotions are authorized, with fixed percentage grade limitations in all grades based on statutorily authorized strengths. The second is the one which applies today, when all officers on active duty are not regular. For this situation the Officer Personnel Act contained temporary promotion provisions (Title III). In 1954 the Officer Personnel Act was supplemented by the Officer Grade Limitation Act which specifies grade limitations which are applicable to regular, reserve, and temporary officers alike. The Services continue to operate under these temporary provisions today because the defense requirements of the country have consistently required larger officer forces than the regular forces authorized.

Legislation to update and modernize the permanent promotion laws is included in the proposed "Defense Officer Personnel Management Act" which was transmitted to the Congress on 25 January 1974. If enacted, this new promotion system

will eliminate temporary active duty promotions and place all officer grades except for some flag grades on a permanent basis.

89. QUESTION: How many four- and three-star officers will be serving on active duty on June 30, 1974? Please indicate by grade and service how many field grade officers and company grade officers will be serving on active duty on June 30, 1974. Please provide information on how these grade levels compare to the grade l[illegible]ls on June 30, 1945, June 30, 1953, June 30, 1964 and June 30, 1973.

ANSWER: There will be 39 four-star and 137 three-star officers on active duty on June 30, 1974.

90. QUESTION: The London-based Institute of Strategic Studies reported in 1974 (Vol. XV, No. 1, Jan-Feb 1973 "The Wasteful Ways of NATO") that the adjusted peacetime division slice (division plus its share of nondivisional support personnel) for U.S. Forces in West Germany was approximately 42,000 men but only 18,500 for Soviet Forces. In the FY 1973 Department of Defense Military Posture Statement, the Chairman of the Joint Chiefs of Staff, Admiral Moorer stated: "A Soviet tank division at full strength has about 9,000 men, over 300 tanks; whereas an average U.S. armored division has about 17,000–18,000 men, 324 tanks." Considering that the tank is the primary weapon of an armored division, would you please explain why a U.S. armored division with twice as many soldiers as a Soviet division can field only 24 more battle tanks, and why Soviet divisions apparently attain a much better division slice in the use of their combat skill manpower?

ANSWER: Division organizations vary widely, are subject to different tactical concepts, and division comparisons can be quite misleading. Comparisons such as those made by the Institute for Strategic Studies, for example, ignore the existence of combat units outside of the divisional structures such as U.S. Armored Cavalry Regiments or U.S. and Soviet surface-to-surface missile units. They also ignore the advantages the U.S. armored division has over the Soviet tank division in numbers of infantrymen, mortars, armored personnel carriers and anti-tank weapons.

The only fair way to compare the two forces is to look at the total force. Detailed comparisons have been made between the U.S. and Soviet force structures in Central Europe. They conclude that the difference in combat components of the two forces as a percent of total forces is not as large as many assume, and that the difference that exists may be a result of the U.S. being able to support a greater part of its combat forces at any one time than the Soviets.

91. QUESTION: What specific weapons systems do you consider are imperative to the attainment of U.S. national security objectives in FY 1975?

ANSWER: The designation of certain weapons systems (while excluding others) as imperative to the attainment of US national security objectives in FY 1975 would tend to oversimplify the many complex interrelationships involved in determining the weapons systems within the budget requests. Included in such relationships is the question of the level of risk to which we are willing to expose the freedom and security of the nation.

Force diversification of strategic weapons—SLBMs, ICBMs, and bombers—remain essential in view of Soviet capabilities. Interrelated issues include the ongoing negotiations for follow-on strategic arms limitations (SAL) agreements, the ABM Treaty, the long leadtime associated with improvement and modernization, i.e., for the TRIDENT system, and the reductions already underway in defensive systems.

The dual capable systems within the general purpose forces provide a tactical nuclear capability to our theater commands. The tactical nu-

Grade	*1974*	*1973*	*1964*	*1953*	*1945*
Service—Army					
General	482	499	507	479	1,221
Colonel	5,214	5,485	5,168	5,142	8,145
Lt Colonel	11,424	12,285	12,386	13,046	21,852
Major	17,700	18,949	17,122	18,151	46,686
Captain	33,275	36,337	30,063	33,092	125,885
1st Lieutenant	11,260	14,917	15,935	31,605	193,328
2nd Lieutenant	13,114	12,722	19,459	30,851	96,229
Service—Navy					
Admiral	297	311	292	277	470
Captain	3,990	3,982	4,197	2,818	3,877
Commander	7,905	8,228	8,022	6,887	6,861
Lt Commander	14,863	15,499	12,054	10,792	19,356
Lieutenant	14,051	16,671	21,370	24,309	96,784
Lt (jr. grade)	13,111	11,182	16,726	16,894	94,278
Ensign	9,806	10,464	11,902	13,730	86,316
Service—Marine Corps					
General	71	71	60	59	79
Colonel	616	636	606	508	391
Lt Colonel	1,532	1,523	1,402	1,183	1,029
Major	2,989	3,006	2,434	2,435	2,160
Captain	5,021	5,173	3,766	4,189	6,235
1st Lieutenant	4,267	4,288	4,939	3,134	14,269
2nd Lieutenant	3,283	3,108	2,102	6,084	9,641
Service—Air Force					
General	398	410	435	382	298
Colonel	6,095	6,128	5,352	4,314	2,576
Lt Colonel	13,979	14,418	14,537	8,324	7,225
Major	21,339	22,347	23,471	20,805	23,400
Captain	40,404	44,732	50,685	36,649	71,706
1st Lieutenant	14,147	16,084	21,737	32,090	134,917
2nd Lieutenant	14,740	10,803	14,401	24,205	101,935

1901

clear capability provides deterrence against similarly equipped Warsaw Pact forces, a range of response options and the inherent capability if needed against conventional attack. As with the strategic systems, general purpose weapons systems diversification is essential.

To maintain the capability to meet limited threats by limited means as well as the capability for a stalwart non-nuclear defense requires diversification within the land, sea, air and mobility forces.

Again there are many interrelationships which complicate the designation of one year's imperative systems. These include the attainment of a desired mix of high cost, high performance and lower cost, lesser performance units; the long leadtime associated with complex units, the efficiency of completing a production line run in a cost effective manner, the balance between existing systems and those in the research and development phase, the capability of weapons systems of allies, and the potential influence of MBFR negotiations. In view of the complexities cited above, the identification of specific weapons systems as imperative in FY 1975 would tend to be misleading to the Commission.

92. QUESTION: If you were required to make reductions in the defense portion of the FY 1975 budget in each of the amounts stated below, outline and explain what specific actions you would take in regard to reducing: (1) Strategic Forces, (2) General Purpose Forces, (3) Airlift/Sealift, (4) Guard and Reserve Forces, (5) Research and Development, (6) Central Supply and Maintenance, (7) Training, Medical and General Personnel Activities, (8) Administration and Associated Activities, (9) Procurement and (10) Support to other Nations.

$5 billion
$10 billion
$20 billion
$30 billion

ANSWER: The present defense budget is less than six percent of our GNP and is a shrinking share of our national expenditures. The budget is of the right magnitude for this period of time. This amount is necessary to determine whether the U.S. can continue to fulfill its world responsibilities. If we were required to make large reductions in the defense portion of the FY 75 budget it would first be necessary to examine what changes would be required in national strategy and objectives, based on a reduced ability of the DoD to support these elements of national policy. This review would have to be done by the National Security Council in conjunction with the appropriate Congressional Committee. Specific program actions could then be proposed in accordance with the strategy and objectives changes.

93. QUESTION: Please provide comments from each of the military services on:

(1) What each Service considers as the minimum essential manpower force levels, overseas deployments and weapons system (in the inventory or to be procured and produced by 1983) required for accomplishment of the assigned Service mission statement?

(2) What military and civilian manpower deployments, overseas bases and projected weapons systems each Service believe it possible to reduce or eliminate?

(3) What portions of their mission statements and force commitments should be altered or eliminated in the interest of better mission accomplishment, more efficient operation and improvement of combat capability?

94. QUESTION: Please provide a statement from each military Department outlining the specific military requirements that the Department considers essential to the attainment of U.S. national security objectives through 1980. Through 1985.

95. QUESTION: Please have each military service (with separate statements prepared by the Navy and Marine Corps) prepare and submit a statement of how they view the overall mission assignment, force structuring, deployment, and weapons systems programming of each of their sister services, and what changes they would recommend for the other services.

ANSWER: Following is information which responds to questions 93, 94 and 95.

The National Security Act of 1947, as amended, provides for centralized direction and control of all functions of the Department of Defense by the Secretary of Defense. The military departments and services have responsibility for organizing, training and equipping forces assigned to the unified and specified commands. The Joint Chiefs of Staff act both as Chiefs of their respective services and members of the corporate body which is designated the Joint Chiefs of Staff. They are the principal military advisors to the President, the National Security Council and the Secretary of Defense.

The Joint Chiefs of Staff annually prepare and submit to the Secretary of Defense for his consideration statements of military requirements based on the threat, US strategic considerations, current national security policy and strategic war plans. These statements of requirements include tasks, priorities, force requirements and general strategic guidance for development of military installations and bases, and for equipage and maintenance of military forces. In preparing these recommendations, initial force estimates are derived for each service principally in consideration of the threat and the most demanding contingencies that might arise. These requirements are then prioritized by the application of predicted available resources. Each service participates in this process and reviews the

force structure recommendations of the other services. Differences do occur, as must be expected, but these are usually few and of relatively minor importance.

Because force structure analysis involves the existing and forecast threat, recommendations based on that analysis are classified as Top Secret. These recommendations are under constant review, however, and are formally reaccomplished annually, as noted above. The Secretary of Defense uses these recommendations in helping to prepare the annual budget recommendations submitted to the Congress.

96. QUESTION: To date, the Vienna talks on Mutual Force Reductions (MFR) have hinged on the possibility of an agreement between the Soviet Union and the United States on a mutually acceptable level of troop reductions in Central Europe. Assuming that some slightly lower level of forces can eventually be agreed upon by both superpowers, would you please comment on how a reduction of say 25,000 men each would alleviate the basic problem and danger of a continuing armed confrontation of the superpowers in Central Europe? Wouldn't a formal agreement establishing a treaty-specified level of force have a tendency to institutionalize and perpetuate an almost permanent level of US and Soviet military forces in Central Europe, rather than substantively reducing the threat of continued armed confrontation?

ANSWER: In presenting the NATO proposals, US Ambassador Stanley Resor characterized them as "specific proposals (that) will contribute in a significant way to a more stable relationship between us and . . . strengthen the peace and security in Europe."

Specifically, we have sought a two-phased reduction: Soviet and American forces being reduced by an equal percentage in the first phase and the two alliances achieving an equal force strength (a common ceiling) by the conclusion of the second phase. Because the Soviet forces are larger than the American forces stationed in the negotiating area (460,000–193,000) and the Warsaw Pact is similarly larger than NATO in the area (925,000–777,000), equal percentage reductions can result in a larger diminution of forces than might be achieved by equally sized reductions.

NATO's negotiating position has sought to bring increased security at decreased force levels in two additional ways. We have stipulated that the Soviet withdrawal should be composed of armored units, since the Soviet preponderance in armor is a destabilizing element. Second, we have called for the inclusion of "associated measures" that would defuse the current confrontation by providing greater openness and restraint in military matters.

Whatever the level of forces at the end of MBFR, it will be a ceiling. In that sense the gain from reductions of a certain size may be greater than implied by the amount reduced. We will have established the future outside parameters and have foreclosed a future of a continuous and unbounded arms race.

The declining spiral of arms we can create by a successful conclusion to MBFR could in turn create an atmosphere of mutual trust. MBFR and CSCE need not be aberrations; they may be small but seminal parts of a new trend in Europe. To the extent that reductions now contribute to that trend, their value and import cannot be quantified. It is in that light that we view the residual force levels that may accrue; not as permanent floors but as necessary levels for a period ahead in which the parties will assess each other's intent and seek in many forums to diminish further the sources and manifestations of confrontation. Thus, far from being a device to cast in concrete our residual strength, MBFR is a prerequisite to a climate in which confrontation in Europe might pass.

97. QUESTION: In your recent FY 1975 defense posture statement submitted to the Senate Armed Services Committee, you were quoted in the press as stating that the Department of Defense was "beating fat into swords". In February, 1972, Secretary of Defense Laird indicated that the FY 1973 Defense Budget was a "no fat, bare bones" request. In March, 1973, Secretary Richardson indicated that he had closely examined the Defense Budget for FY 1974 and had found no fat in it. Now you are indicating that there is (and evidentally has been) fat in the defense budget particularly in the area of manpower. But you propose to shift this fat into increased combat forces. What change in threat analysis or national defense mission and security requirements necessitate additional U.S. combat elements? Why can't this manpower fat that you indicate is in the budget not be eliminated from active duty and savings made in overall manpower costs?

ANSWER: The Department is attempting to achieve efficiencies in our existing forces so that there is a larger portion of combat man-years for a given total strength. We can manage our resources more effectively, and we are attempting to do so. For example, we plan to take the Army resources that result from a reduction in headquarters and convert them into additional combat capability, which is the direction Congress has said it would like us to follow. In view of the overall thinness of our general purpose forces, we must be prepared to transform those resources saved from such adjustments into the additional combat capability that is necessary.

98. QUESTION: The 1975 Defense budget requests funds for the development of an ICBM capacity with greater accuracy than the present 1,500 feet of the Minuteman. In addition, funds are requested

1903

for increasing the "yield" of the nuclear warheads. Since the present targeting policy includes both military and non-military (cities) targets, what is the need for a nuclear missile accuracy of less than 1,500 feet, unless the military target is a hardened silo under the ground? Please explain, especially in view of the request of an increased yield of the warheads.

99. QUESTION: Since so many of the military targets are located near population centers, the effects of a nuclear explosion on the military target near a city will be catastrophic to the civilian population. The military targets that are remote from the civilian population need no further warhead accuracy unless again the intention is to target missiles in hardened silos. In view of the additional billions being spent for ASW research by the United States, won't the Soviets interpret these programs of increased accuracy and yield as a first strike policy by the United States? Please explain.

ANSWER: The development programs for improved accuracy and yield to which you refer provide the option for an improved military capability and a deterrent to Soviet deployment of a major silo-killing capability.

The destruction of a hard military target is not simply a function of accuracy or yield, it results from the combined effects of accuracy, yield, and the number of warheads applied to the target, with accuracy being a most important factor. Both the U.S. and the Soviet Union already have the necessary combinations of accuracy, yield, and numbers in their missile forces to provide some hard-target-kill capability, but it is not a particularly efficient capability. Thus, to the extent that we want to minimize unintended collateral damage from attacks on hardened military targets, we will want to emphasize high accuracy and *low* yields for a part of our missile force, thereby increasing our targeting flexibility by increasing the number of hard targets that can be destroyed with one, or at most two, *low or moderate* yield weapons.

With regard to deployment of accurate, *high* yield warheads capable of destroying a major fraction of a fixed silo ICBM force, we would be quite content if the USSR avoided acquisition of such a major counterforce capability. But we are troubled by the Soviet momentum in the testing of three new MIRVed ICBMs with much larger throw weight than our Minuteman III, with each missile carrying large yield RVs, and we simply cannot ignore the prospect of a growing disparity in silo-killing capability between the two major nuclear powers implicit in the deployment of these ICBMs. We do not propose to let an opponent threaten a major component of our ICBM force without being able to pose a comparable threat, nor do we propose to let an enemy put us in a position where we are left with no more than a capability to hold his cities hostage after the first phase of a nuclear conflict. The development of a high yield RV in addition to improved accuracy hedges against the need to match the Soviets in silo-killing capability.

The Soviets should not interpret U.S. development efforts for improved accuracy and increased yield as an attempt to attain a disarming first strike capability. Our actions are in reaction to their initiatives in this area, not the other way around. Furthermore, attainment of such a capability would be extremely unlikely on technical and economic grounds because:

—The U.S. could not count on destroying in a timely manner a large enough portion of the Soviet hardened ICBM force to avoid severe damage to U.S. population and industry in retaliation, even with all technically feasible improvements in U.S. offensive missile forces, and even if the Soviet ICBMs remain in their silos.

—The U.S. has no realistic prospect of being able to destroy in a sudden attack all of the Soviet deployed SSBN force.

—Deployment of a heavy ballistic missile defense, an important ingredient in a disarming first strike strategy, is precluded by the ABM Treaty.

100. QUESTION: Secretary of Defense Laird in 1969 interpreted the development of a high yield Soviet missile as a first-strike effort by the Soviet Union even though that missile did not render vulnerable our submarine fleet. Why would the Soviet Union not be justified in making a similar assessment of United States development of such a high yield/high accuracy weapon system? Please explain.

ANSWER: In 1969, we did not have a SALT agreement limiting Soviet ICBM deployments, the Soviets were working on the key ingredient necessary to give their ICBMs the capability to destroy ICBM silos, and the Soviets were developing and deploying both an ABM and extensive air defense system. The combinations of these activities form the ingredients of a disarming first strike strategy and led Secretary Laird to his assessment at that time.

In view of developments since 1969, we believe the Soviets would not assess U.S. development programs as an attempt to achieve a disarming first strike capability. First, as noted in the answer to the previous two questions, the U.S. is *reacting* to Soviet development of an accurate, high yield MIRV capability in an attempt to discourage further Soviet progress in this area. And second, we have noted that the achievement of a disarming first strike capability is extremely unlikely on technical and economic grounds.

101. QUESTION: What effect will this proposal for a new generation of missiles of greater yield and

1904

greater accuracy have on the SALT negotiations? Please explain.

ANSWER: The U.S. has not and hopefully will not be forced into a position where the acquisition of a new generation of missiles, not now in approved programs, is necessary. Our goal in SALT-Two is to prevent a situation where either side has a major strategic advantage, actual or perceived. Should we be unsuccessful in controlling the size and character of the strategic offensive forces through negotiation, we will have to fund strategic programs which can restore essential equivalence and stability in the absence of a SALT agreement.

102. QUESTION: If the Soviet Union does interpret our actions of developing a higher yield/higher accuracy ICBM warhead as the development of a first strike capability (i.e., a U.S. capacity to hit Soviet missiles in their silos), would not that interpretation increase the likelihood of the use of nuclear weapons by making the option of a first strike by the Soviet Union more enticing to them? If our submarine fleet would still be a deterrent to a first strike, what is the necessity of building the new generation of high accuracy/high yield weapons for our land-based missiles?

ANSWER: First, the term first-strike is imprecise. It could mean nothing more than the first use of a single weapon, or it could denote an attack with the objective of reducing an opponent's strategic offensive forces to the point where they could no longer penetrate our defenses in sufficient numbers to cause significant damage to population or industries. The latter is a "disarming" first-strike. In the absence of effective missile defenses and anti-submarine capabilities, neither the U.S. nor the Soviets have remotely approached a "disarming" first-strike capability today nor can they in the future. This fact is well understood by both sides. Therefore, the notion of either side being enticed into a first-strike doomed to operational failure on the one hand, while ensuring national extinction on the other, is a notion not likely to gain approval in either government.

Second, it should be understood that the U.S. is neither interested nor capable of acquiring a "first strike capability" as is implied in the question. Current R&D efforts to increase ICBM effectiveness through increased yields or accuracies are straightforward, prudent measures to keep abreast of technology and to be prepared to match the Soviet force if a satisfactory SALT agreement is not reached. We have no plans at this time to acquire new ICBM forces and will only consider making such plans if the Soviets persist in seeking major strategic advantage.

103. QUESTION: If our land-based ICBMs are given a new war-making role by developing for them a new high yield/high accuracy warhead, will those with operational responsibility be able to argue that phasing out the land-based missiles no longer makes sense and therefore such a proposal at SALT will be undermined by this new policy of weapons development? Please explain.

ANSWER: There is no plan to give our ICBMs a "war-making role by developing for them a new high yield/high accuracy warhead." The primary purpose for our forces is deterrence of war. Should a conflict commence we intend that our forces have the requisite selectivity and flexibility to terminate the conflict at the lowest possible level of intensity. Such a capability requires warhead yield and accuracy characteristics compatible with the targets to be engaged. In most instances, as accuracy is improved the yield requirement is reduced. By taking advantage of past improvements in the yield/accuracy trade-off, we believe our present force is credible and contributes to deterrence. Also contributing to the credibility of our strategic forces is the very fact that they are rather well distributed among the landbased ICBMs, the heavy bombers and the submarine launched missile force. The phasing out of any one of these complementary forces has not been considered as a SALT option. Land-based ICBMs will be retained in the U.S. force structure for the foreseeable future. Because of their accuracy, yields and versatility, it is primarily the land-based ICBM force, at least over the near term, that provides the selectivity, flexibility and rapid response that helps deter Soviet adventurism. It is our goal in SALT to enter into an agreement with the Soviets which would permit a mutual scaling down of our nuclear forces. The complete elimination of any single element of what is currently labeled the "TRIAD" however, is highly unlikely to emerge from a SALT agreement and is therefore not under active consideration.

104. QUESTION: In 1969 my request for a listing of all research projects funded by the several defense departments triggered a massive and prolonged exercise that ultimately produced a listing equivalent in volume to a file cabinet. The time it took to produce the material suggested to us at the time that DoD information systems for ongoing research projects might not be complete. What is the status of your systems today for reporting to the DoD management, and to Congress, information on research projects? In particular, what changes, if any, have been made in these systems since the time of my initial inquiry?

ANSWER: There are currently 20,000 write-ups describing ongoing work in the Defense Documentation Center (DDC) data bank, of which 14,000 are in the 6.1 (research) and 6.2 (exploratory development) categories. During the last three years there has been a substantial effort to streamline the retrieval system which has resulted in a significant

1905

reduction in response time. Currently, the average response time to a written request for a search is five days. Additionally, the development and installation of on-line remote terminals has resulted in a substantially increased capability. This capability provides laboratories or headquarters staffs direct access to the data bank. With this system, the users can search the data files in a matter of minutes and print out summarized information on a group of projects, or detailed information on a particular project. If a remote terminal search results in a voluminous output, DDC can be directed to retrieve and print the information that night and mail it the next day. There are currently 34 remote terminals installed and it is planned that by the end of FY 75 the system will include 81 terminals. The usage of DDC information has increased dramatically during the last several years. The number of search requests has doubled between FY 70 and FY 73. The quality of work unit summaries has improved substantially during the last four years. In FY 69, less than two-thirds of the summaries were up-to-date; presently, more than ninety-six percent are current.

105. QUESTION: The Section 203 requirement of the defense authorization for FY 1970 put into motion a major review of each DoD research project to test relevance to defense needs. What are present DoD policy procedural requirements concerning the relevance of DoD funded research to defense needs? I would appreciate such information for ARPA and for the Departments of the Army, Air Force and Navy.

ANSWER: The relevance requirements of Sections 203 and 204 have become the guiding principals of the DoD research program. It is the first question that is asked about any project; it is the first item which is covered in any briefing. It has become so integral a part of our review procedure at all levels that it is impossible to think of it as a special requirement; rather it is a primary purpose of any managerial review. This is true of all Services and it is reinforced continuously by active DoD program reviews. No specific procedures have been changed on paper as a result of this, but the effects have been to reinforce and emphasize the relevance justification in every planning document.

106. QUESTION: How much research is DoD now funding at universities? How has that funding changed since FY 1970? Please provide information by fiscal years.

ANSWER: DoD funding for RDT&E at universities and colleges (millions of dollars):

FY 1970	*FY 1971*	*FY 1972*	*FY 1973*	*FY 1974*
213.5	210.5	215.4	218.6 (Est.)	199.0 (Est.)

107. QUESTION: For DoD funded university research, what information is there on the proportion of projects funded as a result of specific DoD requests for proposals and projects funded as a result of unsolicited proposals? What is DoD policy on funding of research via unsolicited proposals?

ANSWER: There is no specific aggregate information as to whether a contract results from a solicitation or not. The research offices of the Services—Army Research Office, Office of Naval Research, and Air Force Office of Scientific Research—sponsor more than 40% of university research, and award contracts almost entirely on the basis of unsolicited proposals. However, other Service organizations award a substantial number of contracts through requests for proposal. DoD policy does not restrict the research proposals either way, but certain organizations are internally constrained by manpower, mission or procedures to favor one method or the other. Unsolicited proposals are, by regulation, accepted by all of the Services and Defense Agencies. Of those submitted for new work, the fraction resulting in favorable review culminating in a contract is of the order of 25–30%.

108. QUESTION: Please compare the relative proportions of research funded via grants at universities for FY 1970 and for the latest fiscal year for which information is available. What factors now determine whether a contract or a grant will be used to fund DoD research at universities? In particular, is the choice at the option of the university, or is it related to the nature and purpose of the defense needs?

ANSWER: DoD grants for basic scientific research (millions of dollars):

CY 1969	*CY 1970*	*CY 1971*	*CY 1972*	*CY 1973*
24.7	22.7	23.8	27.2	26.0

These are granted primarily to universities. Although stated by calendar year (the established reporting period for grants), when compared to the total research to universities given in the previous table, there is no established trend. The recent average has been 13½% of DoD research at universities by grant. The choice of grant or contract instrument is negotiated between the service and the university. It is not particularly related to the nature and purpose of the research but rather to such factors as the mutuality of interest between the university and the service and the possibility of cost sharing, which is required for grants. In addition, the grant instrument is somewhat less complicated and expensive to administer from both the university

and the service viewpoint. It is, however, less flexible to changes than is the contract. It is used in basic research funding where the work most often fits as a portion of an ongoing university program and cost sharing is justified. In any case, it is considered a negotiable procurement instrument to be determined after the acceptance of a proposal.

109. QUESTION: One apparent result of the Section 203 legislation was a decision by the DoD to withdraw support from certain specific fields of science, such as high energy physics. This led to some strains upon the National Science Foundation and other agencies as funding of defense supported projects suddenly ended. With the benefit of hindsight, what lessons for Federal research administration were learned from DoD's implementation of Section 203? In particular, what was learned about coordinating Federal research when it is shifted from one agency to another? How pertinent is this experience to shifts that may attend future Federal organization of energy research and development?

ANSWER: Federal research administration has certainly learned some lessons from the phase-out of DoD support in specific areas. The high energy physics research is a prime example; perhaps even more interesting since the phase-out was begun before Section 203 legislation and, therefore, without specific Congressional mandate. Negotiation in this area was rather lengthy. The general lessons learned were that orderly transfer was almost impossible to achieve. The receiving agency has its own priorities and programs with which the new work must compete. The losing agency most probably had the projects structured to satisfy specific future requirements which might be somewhat different from those of the receiving agency. Individual contracts are essentially not transferred at all. The workers on these contracts are, for all practical purposes, injected into the general pool of bidders to the receiving agency. The very best will get picked up in any case—others will lose out.

Other experiences indicate that the transfer of a large project is much easier, conceptually, even though the amount of funds involved may be greater. A sufficiently large project receives special attention that keeps it from being ignored. Specific Congressional or Presidential guidance help draw attention to it. When the transfer is accompanied by the passing of total control to the receiving agency, there is seemingly less likelihood of continuing coordination than there is between two agencies which have similar ongoing programs. These lessons are not dependent upon the type of research being conducted and, therefore, are pertinent to energy research.

110. QUESTION: From your standpoint, what have been the long-term effects of Section 203 upon relations between the academic community and the Department of Defense?

ANSWER: In general, the effects of Section 203 have been to strengthen control of the research program; a better managed research program can only improve our relations with the academic community. There have been no specific academic reactions detrimental to useful relations with the Department of Defense stemming specifically from this Section. It is to be noted, however, that coupling 203 with, and its influence on budget cuts, has significantly reduced the influence of the Department of Defense in academic research and with the academic community in general. At the time of 203, the picture was clouded by other confrontations in the academic community over relations with the military. War protests, draft effects, ROTC and recruiters on campus were much more active questions but they reflected on the research community. Some researchers were pressured out of the defense community as a result; some attributed pressure to the explicit relevance language of Section 203. The number was small. The situation has changed sufficiently that this apparently would not occur today. Certain over zealous interpretations of the wording, corrected by Section 204 in FY 1971, caused individual misunderstanding, but the effect was minor.

111. QUESTION: Please describe the research now funded by the DoD and its constituent departments and agencies at the universities and compare it with the situation in FY 1970 at the outset of the application of Section 203. In particular, what from your standpoint, are the notable differences in purpose, level and subject matter?

ANSWER: The Department of Defense funds university research in a very wide range of disciplines from basic science, physics, chemistry, mathematics, through the engineering disciplines of structures, materials, electronics, aerodynamics, energy conversion and the biomedical and behavioral sciences. Applied research supports individual specific defense needs. This general description is no different from FY 1970 and indeed our guiding philosophy is no different. Certain subareas are added or subtracted as missions change and we probably have significantly greater control and visibility in the total program. Mathematics is still an active research area but so called "pure mathematics" has been eliminated in favor of applied areas. High energy physics is no longer supported by the Department of Defense nor is research on controlled thermonuclear fusion.

190

Duties and Functions of Military Advisors and Military Assistance Programs

JUSMAT and Military Assistance Programs are key elements in the system through which military assistance and Foreign Military Sales requirements are identified and the resulting grant aid programs and sales arrangements are developed and implemented in a manner ensuring their maximum contribution to U.S. security objectives. This organization is not only responsible for efficient planning, administration and management of the in-country Military Assistance Program (MAP) and Foreign Military Sales (FMS) programs, but also performs other functions of equal importance to U.S. interests by:

—Providing knowledgeable Department of Defense representation in country to advise and assist the host country prior to and during major sales and delivery transactions involving a wide variety of complex military equipment produced by U.S. manufacturers.

—Advising and assisting the host country in the development of military self-reliance and a realistic force level which meets the country's security needs, is within its capability to maintain, and is also consistent with U.S. collective security interests.

—Establishing and maintaining rapport with the military of the host country to provide channels of communication, dialogue and influence which are valuable to the U.S. Government for diplomatic and commercial, as well as military, reasons.

—Monitoring the movement and delivery of MAP end items and continuous observation and review of their use by recipient countries to ensure proper utilization and disposal—a residual function which continues after termination of grant aid programs.

The specific assigned missions of this organization are as follows:

—With respect to security assistance, provide advice and assistance to the Chief of the U.S. Diplomatic Mission.

—With respect to security assistance, represent the Secretary of Defense with the host country's military establishment.

—Establish and maintain liaison between the U.S. defense establishment and that of the host country.

—Establish and maintain a relationship of mutual trust and confidence with the host country's military establishment.

—Consistent with DoD policies, country objectives and financial guidelines, develop security assistance plans and programs in coordination with other elements of the Country Team for submission to the Unified Commander.

—Assist U.S. Military Departments and their subordinate elements in arranging for the receipt, transfer, and acceptance of security assistance material, training, and other services for recipient countries.

—Monitor and report on the utilization by the host country of defense articles and services provided as grant aid, as well as personnel trained by the U.S.

—Assist the host government in the identification, administration, and proper disposition of security assistance material that is excess to current needs, including the reporting of (a) any dispositions made which are not in accordance with applicable understandings, agreements, and authorizations; and (b) the unauthorized transfer of defense articles of U.S. origin to third countries.

—Provide appropriate advisory services and technological assistance to the host country on security assistance matters. In less developed countries, provide advisory services, technical assistance, and training to develop a realistic capability to plan, program, budget and manage the military resources of the host country.

—Assist the host government in arranging for purchase of defense articles and services to meet valid country requirements through foreign military sales (FMS) and commercial sales.

—Assist the DSAA and the Military Departments, as requested, in carrying out FMS negotiations with foreign governments.

—Cooperate with and assist representatives of U.S. firms in the sale of U.S. defense articles and services to meet valid country requirements.

—When requested by appropriate authority, act as

channel of communications for the Assistant Secretary of Defense (Installations & Logistics) (and the U.S. Defense Advisor to U.S. Mission NATO) regarding production and other logistical matters between the U.S. and the host government.

—When requested by appropriate authority, act as channel of communications for the Director, Defense Research & Engineering, regarding research and development matters between the U.S. and the host government.

—Keep the Assistant Secretary of Defense (International Security Affairs), Defense Security Assistance Agency, JCS, Unified Commands, and Military Departments, as appropriate, informed of security assistance activities in-country.

1909

ANNEX B:

February 26, 1974

Honorable James R. Schlesinger
Secretary of Defense
U. S. Department of Defense
Washington, D. C.

Dear Mr. Secretary:

Enclosed are questions which I have prepared dealing with various matters relating to Defense policy and proposed expenditures contained in the 1975 budget for consideration by the Commission on the Organization of the Government for the Conduct of Foreign Policy.

All of the premises upon which these questions are based have been formulated from unclassified information that has appeared in the American press and elsewhere. I believe all of the information solicited by these questions should be part of the public domain and should be publicly discussed by the Commission and within the Congress in open session.

I therefore request that none of the information supplied by you in answer to these questions relate to classified information, and if in any case you are unable to answer fully the question because you prefer the answer to be classified, please state that aspect is classified and the reasons for the classification of that information. It is only through an open dialogue on questions such as these that the wisdom for these policies and proposed expenditures can be truly validated.

I look forward to an early response from you on these matters.

Sincerely,

(s) MIKE MANSFIELD

Enclosure

☆ U.S. GOVERNMENT PRINTING OFFICE : 1976 O—212-688

1910