



The Foreign Policy Powers of Congress

The US Constitution contains ambiguities regarding the roles of Congress and the President in making foreign policy. In practice, strong Presidents and legislators have often asserted their prerogatives in this area at the expense of the other. A case in point is the Iran Nuclear Agreement Review legislation, whereby Congress is insisting on approving the final agreement despite opposition by the Obama Administration.

The debate over foreign policy powers arises from the language of the US Constitution that gives the President the power to make treaties and nominate Ambassadors and Executive Department leaders, with the advice and consent of the Senate. In addition to these responsibilities, the President acts as Commander-in-Chief of the Armed Forces and has the duty to receive Ambassadors and other public ministers from abroad. Since World War II, these powers have generally been interpreted as giving the President primacy in the conduct of US foreign policy.

The Senate's important role in the ratification of treaties and in approving Ambassadorial nominations and high ranking Executive Branch officials also is explicitly contained in the US Constitution. Other Constitutional sources of congressional power in foreign policy making include (1) the responsibility for appropriating all government monies, including foreign assistance; (2) the power to declare war under Article 1, Section 8 of the US Constitution and (3) the power to regulate commerce with foreign nations. Congress has used these powers to claim the right to limit or guide the President's foreign policy, and on occasion has tried to initiate its own policies. The actions of Congress regarding foreign policy have drawn criticism from all presidents as meddling in presidential affairs.

An example of congressional-presidential conflict over foreign policy powers is the debate that occurred over the use of US troops to liberate Kuwait following Iraq's invasion in 1990. A group of House members sought a preliminary injunction in US Court to prevent George H.W. Bush from ordering US troops into offensive combat without specific congressional authorization. The court, however, was reluctant to become embroiled in war-making disputes between Legislative and Executive branches and refused the request. Ultimately, President Bush requested and Congress approved a resolution authorizing the use of military force to liberate Kuwait.

A more recent example of Presidential-Congressional conflict occurred in 2002 when President George W. Bush received congressional approval for the use of force against Iraq in 2002. He used this approval to invade Iraq in early 2003. What appears to be lost is the congressional requirement to declare war. This requirement is being replaced by resolutions authorizing military activities. In effect, Congress is ceding its constitutional authority to declare war to the President.

The Congress has made clear its desire that any military action in Syria or Iran require a congressional resolution authorizing the use of force against ISIL. The Administration broadly interprets the 2002 resolution as allowing the use of force to fight terrorism, while Congress insists the authority is limited to Iraq and wants a new resolution against ISIL. This is an on-going debate within Congress and there have been legislative moves that would replace the War Powers Act, but so far Congress has not acted on the legislation.

By far, however, Congress's greatest authority over US foreign policy is its "power of the purse". Since Congress is given the sole power to appropriate monies, Constitutional experts believe Congress possesses the power to determine how money can be used. This determination can be expressed as a policy applicable to the use of funds or as a restriction or limitation on the use of funds. Congress's power to determine whether or not to fund a particular country or program significantly affects US foreign policy.