



Office of the
Assistant Attorney General

Washington, D.C. 20530

MAR 23 1984

MEMORANDUM TO FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Re: Increased Congressional Powers in the
Realm of United States Foreign Policy
Since the Vietnam War

You have asked us for a list of source materials giving examples of cases where Congress has acted after the Vietnam War to increase its powers in the realm of United States foreign policy. In the time available, we have compiled the following, nonexhaustive, list of sources:

A. BACKGROUND MATERIALS

The following publications discuss the question raised in general terms:

1. Books

Congressional Quarterly, Powers of Congress (2d ed. 1982), Chs. 7-9.

C. Crabb & P. Holt, Invitation to Struggle: Congress, the President and Foreign Policy (1980).

T. Franck, ed., The Tethered Presidency: Congressional Restraints on Executive Power (1981).

2. Articles

Bax, "The Legislative-Executive Relationship in Foreign Policy: New Partnership or New Competition?" Orbis (Winter 1977).

Cronin, "A Resurgent Congress and the Imperial Presidency," Political Science Quarterly (Summer 1980).

Tower, "Congress Versus the President: The Formulation and Implementation of American Foreign Policy," Foreign Affairs 229 (Winter 1981/82).

The history of recent congressional action in this area has been succinctly summarized in the following excerpt from the 1981/82 Foreign Affairs article by Senator John G. Tower, Chairman of the Senate Armed Services Committee, supra, at 234:

"The 1970s were marked by a rash of Congressionally initiated foreign policy legislation that limited the President's range of options on a number of foreign policy issues. The thrust of the legislation was to restrict the President's ability to dispatch troops abroad in a crisis, and to proscribe his authority in arms sales, trade, human rights, foreign assistance and intelligence operations. During this period, over 150 separate prohibitions and restrictions were enacted on Executive Branch authority to formulate and implement foreign policy. Not only was much of this legislation ill conceived, if not actually unconstitutional, it has served in a number of instances to be detrimental to the national security and foreign policy interests of the United States."

The following is a descriptive list of illustrative statutes, broken down into the subject-matter categories outlined by Senator Tower. */

B. STATUTES

1. War and National Defense

50 U.S.C. §§ 1541-48 War Powers Resolution Enacted 1973

Description: Provides for congressional oversight "in any case in which United States Armed Forces are introduced into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." The President is required to submit a written report to Congress detailing the circumstances of United States involvement and Congress is authorized to order United States troops removed by concurrent resolution. After 60 days, the President must automatically terminate the use of United States armed forces unless Congress has declared war or extended the 60-day period.

*/ We must note that the constitutionality of many of these statutes remains uncertain, because they attempt to assert congressional oversight over executive action in foreign policymaking through legislative veto devices of the type recently declared unconstitutional by the Supreme Court in Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983). For a more exhaustive treatment of these statutes, broken into subject matter area, see Office of Legal Counsel, Compilation of Currently Effective Statutes That Contain Legislative Veto Provisions (July 15, 1983).

22 U.S.C. § 2441 note

H.R. J. Res. 683

Enacted 1975

Description: Provided that Congress may adopt concurrent resolution requiring withdrawal of civilian personnel assigned to monitor Israeli withdrawal from the Sinai.

50 U.S.C. §§ 1621 et seq. National Emergencies Act Enacted 1976

Description: Establishes procedures for presidential declaration and continuation of national emergencies, but subjects such national emergencies to termination by concurrent resolution.

50 U.S.C. §§ 1702-06

International Emergency Economic Powers Act
(IEEPA) Enacted 1977

Description: Limits economic powers previously granted to President in peacetime emergencies by the Trading With the Enemy Act of 1917. Provides that the President may impose emergency economic controls based on "unusual and extraordinary threat" from outside the United States, but requires him to provide Congress with the reasons for the invocation of national emergency and authorizes Congress to vote to terminate the emergency by concurrent resolution.

2. Arms Export Control

22 U.S.C. § 2776(b)

Arms Export Control Act of 1976 Enacted 1976
Amended 1981

Description: Required President to give advance notice to Congress of any offer to sell to foreign countries defense articles and services valued at \$25 million or more and empowered Congress to disapprove such sales within 20 calendar days by concurrent resolution. Nelson-Bingham Amendments then required advance notification of any sale of "major" defense equipment totaling over \$7 million and gave Congress 30 days in which to exercise its legislative veto. These provisions were involved in recent controversy over sale of AWACS (Airborne Warning and Control System) surveillance aircraft to Saudi Arabia. In 1981, the certification requirement limits were raised from \$25 and \$7 million to \$50 and \$14 million, and the calendar periods for exercising the legislative veto were modified.

3. International Trade

19 U.S.C. §§ 1303(e),
2253(c), 2432, 2434,
2435(c), 2437

Trade Act of 1974

Enacted 1975

Description: Permits Congress to disapprove proposed presidential actions regarding import relief and actions concerning certain

countries by concurrent resolution and authorizes Congress to disapprove various presidential proposals for waiver extensions and extensions of nondiscriminatory treatment to products of foreign countries by simple or concurrent resolution.

12 U.S.C. § 635e(b) Export-Import Bank Amendments of 1974 Enacted 1974

Description: Requires that presidentially proposed limitations for exports to the U.S.S.R. in excess of \$300 million must be approved by concurrent resolution.

4. Human Rights and Security Assistance

22 U.S.C. § 2304 Section 502B of the Foreign Assistance Act Enacted 1974

Description: Prohibits executive branch approval of security assistance to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights and authorizes Congress by joint resolution to terminate or restrict security assistance to such a country. These conditions may only be circumvented upon presidential certification to the Chairman of the Senate Foreign Relations Committee and the Speaker of the House of Representatives that "extraordinary circumstances" exist warranting an exception. § 2304(a)(2).

22 U.S.C. § 2370 note Section 728 of the International Security and Development Cooperation Act of 1981 Enacted 1981

Description: Established five conditions for military aid and sales to El Salvador in fiscal years 1982 and 1983 and required an executive certification within thirty days of the statute's enactment and every one hundred and eighty days thereafter, for the allocation of funds to El Salvador for military aid, education, and training under the Foreign Assistance Act. President must certify that government of El Salvador is making a concerted and significant effort to comply with internationally recognized human rights, is achieving substantial control over its armed forces in order to halt the indiscriminate torture and murder of Salvadoran citizens, is achieving continued progress in economic, political, and agrarian reforms, is committed to the holding of free elections at an early date, and has made good-faith efforts to investigate and bring to justice the murderers of six U.S. citizens.

5. Intelligence Operations and Covert Activities

22 U.S.C. § 2422 Hughes-Ryan Amendment Enacted 1974
 to the Foreign Assistance
 Act

Description: Provides that no funds appropriated under the authority of the Foreign Assistance Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that any such operation is important to U.S. national security and reports about the operation in a timely manner to the appropriate committees of Congress.

50 U.S.C. § 413 Intelligence Authorization Enacted 1980
 Act of Fiscal Year 1981

Description: Continues Hughes-Ryan Amendment's executive reporting requirement, but limits the reporting to the Senate and House Select Committees on Intelligence and provides that the Director of Central Intelligence must give those committees prior notice of "any significant anticipated intelligence activity." § 413(a)(1).

Pub. L. No. 94-212 Tunney Amendment to the Enacted 1975
 Defense Appropriations
 Act of 1976

Description: Prohibited use of funds appropriated in the Act for any activities involving Angola other than intelligence gathering.

22 U.S.C. § 2293 note Clark Amendment Enacted 1976
 to the Arms Export Amended 1980
 Control Act of 1976

Description: Prohibited any assistance of any kind to any group which has the effect or purpose of aiding military or paramilitary operations in Angola. Amended in 1980 to permit such assistance in the interests of United States national security if the President submits a written certification to the appropriate committees of Congress and Congress approves by a joint resolution.

Pub. L. No. 97-377 Boland Amendment Enacted 1982

Description: Bars the use of funds for any paramilitary activities designed to overthrow the Nicaraguan government.

6. Congressional Oversight of Executive Agreements

1 U.S.C. § 112b

Case Act

Enacted 1972
Amended 1977
& 1978

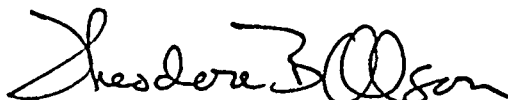
Description: Requires President to transmit to Congress the text of all executive agreements within sixty days of their execution; amended in 1977 and 1978 to provide for more effective means of inducing executive compliance with the Act.

42 U.S.C. § 2153(d)

Atomic Energy Act Amended 1978

Description: Provides that agreements involving cooperation with foreign nations with respect to nuclear technology shall be subject to congressional veto within sixty days of submission to Congress. This provision is currently being considered for amendment by the so-called Proxmire Amendment to the Export Administration Act.

I hope the above lists will be of use to you.



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cc: John G. Roberts, Jr.
Associate Counsel to the President