Congress and Interbranch Politics

LEARNING OBJECTIVES

1. Know the constitutional and institutional context of congressional foreign policymaking.
2. Identify the major historical patterns of interbranch relations in US foreign policy.
3. Understand the context of post–Cold War congressional foreign policymaking.
4. Describe the congressional foreign policy activity in key foreign policy issue areas.

Congress plays a significant and often misunderstood role in the making of US foreign policy, one that presents significant challenges for White House leadership. Conventional wisdom often dismisses Congress and its role, preferring to emphasize the president as “the decider” and casting Congress as some combination of uninterested, inactive, compliant, and deferential. However, for decades presidents and their high-level advisers have seen it differently, regularly complaining about congressional influence. The US Constitution provides Congress and its members with a seemingly impressive array of foreign policy powers, so the institution and its members are capable of playing a formidable role. However, just like presidents, whose leadership in US foreign policymaking is a variable rather than a constant, Congress has, in practice, not been consistent in applying those powers to shape foreign policy, and its engagement and influence also vary.

Nevertheless, understanding the patterns and dynamics of US foreign policymaking requires attention to Congress and its members as part of the governmental circle, interacting with the White House and the foreign policy bureaucracy. In this chapter, we complete
our examination of the key governmental institutions and players in foreign policy by considering the context, historical patterns, and policy behavior of Congress. We examine the constitutional foundation of Congress's power in foreign policy; the ways the institution and its members influence foreign policy; and the patterns of legislative-executive relations and congressional influence since World War II in areas such as the war powers, advice and consent, the power of legislation, and the power of investigations.

THE CONTEXT OF CONGRESSIONAL FOREIGN POLICYMAKING

Since World War II, Congress has alternatively been characterized as acquiescent, resurgent, deferent, assertive, subservient, coequal, and imperial. As we will see, each of these characterizations has sometimes been accurate. As Rebecca Hersman (2000:105) suggests, “The complex and often troubled relationship between Congress and the executive branch over foreign policy defies simple explanations and convenient caricatures.” In fact, congressional foreign policy behavior is highly context dependent, which will be readily apparent by the end of this chapter. We begin by discussing the constitutional and institutional context of interbranch politics in the making of US foreign policy.

The Constitutional Foundation of Foreign Policy

Just a few pages in length, and more than 200 years old, the Constitution is a short, ambiguous document arrived at by negotiation and compromise. Nowhere is this more evident than with respect to its treatment of foreign affairs: The document does not even mention or refer to “the foreign affairs power.” Instead, as we discussed in Chapter 3, Article II of the Constitution enumerates the powers of the president. Placing the general executive power in the president, the Constitution also specifies certain foreign policy powers, including commander in chief, treaty-making and the appointment of ambassadors and cabinet heads (with the advice and consent of the Senate), receiving foreign dignitaries, commissioning military officers, the general executive power, and the power of the veto.

Article I of the Constitution enumerates the powers of the legislative branch. It places the general legislative power in the Congress and stipulates important foreign policy powers by stating that Congress shall

provide for the common Defense and general Welfare; . . . regulate commerce with foreign nations, and among the several States, and with the Indian tribes; . . . define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; . . . declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; . . . raise and support armies; . . . provide and maintain a navy; . . . make rules for the government and regulation of the land and naval forces; [and] provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.
Further, key diplomatic powers of the president are subject to the advice and consent of the Senate, as noted previously. Finally, Congress has the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.”

Hence, the Constitution clearly gives Congress a broad range of powers in the area of foreign policy. There is, in fact, no foreign policy power provided to the president that is not shared by Congress. Although Americans typically understand the distribution of power between Congress and the president as a “separation of powers,” the Constitution actually establishes separate institutions sharing power (Corwin 1957)—which is what is meant by “checks and balances.” For example, while the Congress provides military funding and declares war, the president is the commander in chief. Congress may pass bills, but the president may veto them, and Congress may then override the veto. The president is able to make treaties and appointments, but the Senate must provide its advice and consent. As students of the Constitution such as Edwin Corwin (1957) have indicated, the result is an invitation to struggle, which has fostered recurring conflicts between Congress and the president in the making of foreign policy throughout American history (see also Crabb and Holt 1992).

The Courts, the Congress, and the Presidency

Because of the ambiguity in this invitation to struggle, the power of judicial review (determining the constitutionality of a law or action) has often required the third branch of the US government to play a role in US foreign policy. Generally speaking, in foreign policy, the Supreme Court has tended to rule that the office of the president predominates, especially when the use of force abroad is involved (Fisher 2004a; Henkin 1996).

Let us consider a number of key areas in which the courts have shaped the sharing of power among the separate institutions of the US government.

The parameters of the courts’ views are summarized nicely in two key cases. In United States v. Curtiss-Wright Export Corp. (1936), the Supreme Court not only upheld a congressional grant of authority to the president to prevent the sale of arms to belligerents (which the Curtiss-Wright Corporation had violated in a war involving Bolivia and Paraguay), but it also ruled generally in favor of national governmental and presidential supremacy in foreign policy. The famous majority opinion by Justice George Sutherland asserted that the president’s “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations . . . does not require as a basis for its exercise an act of Congress.”

In contrast, Youngstown Sheet & Tube Co. v. Sawyer (1952) resulted in the Supreme Court invalidating President Truman’s attempt to invoke national security emergency powers during the Korean War to seize domestic steel mills that were under nationwide strike. The Supreme Court concluded that the president’s steel seizure was not authorized by Congress, so the president had violated Congress’s lawmaker authority. The famous concurring opinion by Justice Robert Jackson established a three-tiered hierarchy of legitimate presidential actions. First, “when the President acts pursuant to an express
or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” Second, “when the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.” The third level occurs “when the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” The combination of these cases displays the parameters of the “invitation to struggle.” Louis Henkin (1987:285) has observed, “Important foreign affairs powers lie in [Justice Jackson’s] twilight zone.”

The courts have affected many specific areas of foreign policy. For example, in the area of treaties and executive agreements, the courts have consistently strengthened the power of the president, in part by determining that executive agreements, which are not subject to ratification by the Senate (as formal treaties are), nevertheless have the same force as treaties (see, e.g., US v. Belmont [1937] and US v. Pink [1942]). With respect to the war powers, the courts have struck a delicate balance that also tends to favor the executive branch.

In many instances, the courts have evaded weighing in on such disputes by characterizing them as political questions or by relying on doctrines such as “ripeness” and “implied consent.” Good examples of this practice include the court’s decisions in Crockett v. Reagan (1981), in which some members of Congress challenged the Reagan administration’s power to send military advisors into El Salvador, and Lowry v. Reagan (1987), in which some members of Congress asked the court to require the Reagan administration to comply with the War Powers Act. Similarly, in Dellums v. Bush (1990) and again in Campbell v. Clinton (1999), the courts rejected claims by some members of Congress that George H. W. Bush and Bill Clinton had violated the Constitution either by not consulting adequately with Congress (Bush) or by using force in Kosovo without a congressional authorization (Clinton).

In both cases, the courts referred to an implied consent doctrine that held that Congress had to try to stop the action before resort to the courts was appropriate. However, in both the Dellums and Campbell cases, the courts rejected broad administration claims that sole authority to determine uses of force rested with the executive branch. In Dellums v. Bush, for example, the court ruled that the administration’s claim that it had sole power to decide whether to use force “evaded[d] the plain language of the Constitution and it cannot stand.”

Court decisions have affected some congressional foreign policy tools as well, including the use of the “legislative veto” and access to information. In a 1983 decision, the Supreme Court ruled in Immigration and Naturalization Service v. Chadha that the legislative veto, here involving immigration, was unconstitutional because it violated the separation of powers. The decision called into question Congress’s ability to veto presidential decisions—that is, to pass a concurrent resolution without the president’s signature—concerning, for example, the use of force abroad under the War Powers Act, sales of major weapons systems to foreign governments under the International Security Assistance and Arms Export Control Act, and the export of nuclear fuel and facilities to foreign countries under the Nonproliferation Act (Destler 2005).
The courts have also ruled on issues related to claims of executive privilege, or the right of the executive branch to withhold information from Congress and the public. In the main, the courts have rejected broad claims of this sort and placed restrictions on such privileges. For example, in New York Times v. United States (1971) and US v. Nixon (1974), the courts denied the executive the power to withhold information or prevent the publication of the Pentagon Papers by the press. Similarly, in the 1990s, cases involving Bill Clinton and the Whitewater corruption scandal, the Paula Jones sexual harassment case, and the Monica Lewinsky affair all weakened the president’s powers to exert executive privilege and confidentiality. George W. Bush’s administration challenged such limits in several instances, including a 2001 case when the General Accounting Office (now the Governmental Accountability Office) on behalf of Congress sued Vice President Dick Cheney (who led the energy interagency task force) to release classified information that led to the Bush administration’s energy policy. The court ultimately decided for the administration in this case (Fisher 2004b). In its third year, the Trump administration also advanced aggressive claims of executive power and privilege, triggering legal fights over a variety of matters. The Trump administration even sought to challenge the right of Congress to exercise oversight hearings and subpoena witnesses at all.

Congressional Actors and Avenues of Influence

Congress has been disadvantaged by the combination of the practices and precedents of executive action and some court decisions. Even its own structural characteristics can also be an impediment to policy influence and leadership. For example, the sheer size of Congress—with its 535 members—makes efficient, coherent foreign policy action by Congress difficult. Nevertheless, the institution is still a formidable player in foreign affairs for several reasons. First, and perhaps most important, speaking of Congress as “a player” in foreign policy is inaccurate. In fact, Congress is composed of many players and each is capable of influencing foreign policy. As Rudalevige (2005:428) argues, “Congress is not truly an ‘it’ but a ‘they.’”

At the heart of congressional foreign policymaking are individual members of Congress, especially those who elect to commit themselves and their time to foreign policy matters, who some refer to as “congressional foreign policy entrepreneurs” (e.g., Carter and Scott 2009, 2010; Lantis 2019). As Howell and Pevehouse (2007:34) note, “Congress does not check presidential power, individuals within it do,” and individuals have many routes available to shape foreign policy (e.g., Carter and Scott 2009; Kriner 2010; Lantis 2019). Indeed, as one analyst notes (Tama 2018b), in the current context, both junior and senior members of Congress are engaged in the key areas of congressional activity:

Relatively junior members of Congress are driving or shaping many activist foreign policy initiatives today. This pattern is evident in the ongoing debate over military aid to Saudi Arabia, which has been led in part by first-term Republican Senator Todd Young and second-term Democratic Senator Jeanne Shaheen. Similarly, two first-term senators—Democrat Tim Kaine and Republican Jeff Flake—have spearheaded efforts to pass legislation that would replace the 2001...
law authorizing the use of military force against the perpetrators of the 9/11 terrorist attacks with legislation better-suited to current U.S. counterterrorism operations. Other relatively junior senators who have become leading voices on foreign policy include first-term Democrat Chris Murphy and second-term Republican Marco Rubio . . . . But, in addition to junior members who are becoming active on international issues, Congress retains a considerable number of experienced lawmakers with a strong track record in foreign policy. Such members include Representatives Eliot Engel, Kay Granger, Steny Hoyer, Jim McGovern, Chris Smith, and Mac Thornberry, and Senators Ben Cardin, Lindsay Graham, Pat Leahy, Bob Menendez, and Jack Reed.

In addition to this important understanding, the multiple actors in Congress include the collective institution, each individual chamber, the many committees and subcommittees in which the work of Congress is done, congressional caucuses, the congressional leadership, and the professional staff and support organizations of Congress. This means that we must be careful to distinguish between “activity” and “influence” when we discuss Congress, as there is more to congressional foreign policy behavior than formal outputs such as legislation (Carter and Scott 2009; Lindsay 1994; Martin 2000).

Members of Congress have a wide range of congressional avenues of influence on which to rely. According to Scott (1997), we should distinguish between two dimensions, along which four congressional avenues of influence can be differentiated (see Figure 9.1). Avenues can be either legislative or nonlegislative. Legislative actions involve those most formal things that Congress does to pass laws, approve treaties, and authorize and appropriate funds. By contrast, nonlegislative actions include congressional activities not related to specific legislative documents. Moreover, there are both direct and indirect avenues.

**FIGURE 9.1**
Congressional Paths to Foreign Policy Influence

<table>
<thead>
<tr>
<th>Path</th>
<th>Direct</th>
<th>Indirect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative</td>
<td>Issue-specific legislation</td>
<td>Nonbinding legislation</td>
</tr>
<tr>
<td></td>
<td>Treaties (Senate)</td>
<td>Appointments (Senate)</td>
</tr>
<tr>
<td></td>
<td>War powers</td>
<td>Procedural legislation</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foreign commerce</td>
<td></td>
</tr>
<tr>
<td>Nonlegislative</td>
<td>Informal advice/letters</td>
<td>Framing opinion</td>
</tr>
<tr>
<td></td>
<td>Consultations</td>
<td>Foreign contacts</td>
</tr>
<tr>
<td></td>
<td>Oversight/hearings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Use of courts</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Adapted from James M. Scott, “In the Loop: Congressional Influence in American Foreign Policy,” Journal of Political and Military Sociology 25 (Summer 1997): 61.*
When members take direct action, they target specific foreign policy issues and problems, but when they take indirect action, they typically take aim at the broader context, policy process, or policy climate to signal preferences or condition policy. If we focus only on the direct-legislative avenue, it is easy to understand why so many observers downplay the importance of Congress and its members, since outright legislating of foreign policy is relatively rare (e.g., Hinckley 1994). Our more nuanced distinction helps us to understand that there are many ways that members can influence foreign policy other than by simply trying to make laws. The four quadrants of Figure 9.1 identify key examples of congressional foreign policy activity in each of the four avenues.

As Congress has become increasingly polarized over the past couple decades, it has become even more difficult to assemble majorities to pass legislation. Nevertheless, members of Congress can, if enough votes can be mustered, directly influence policy by legislating action. Also, they can link their efforts across these different paths to maximize their potential impact. Just as important, though, they can also shape decision making—in the executive branch—by triggering anticipated reactions. Essentially, this aspect of congressional influence refers to the threat of congressional legislative action, and the use of that threat as leverage by members to bring administration proposals or actions into line with their preferences. Such congressional signaling or conditioning can play an important role in foreign policy decisions, even without formal legislative actions by the institution (Howell and Pevehouse 2007; Kriner 2010; Lindsay 1994).

**HISTORICAL PATTERNS OF INTERBRANCH RELATIONS ON FOREIGN POLICY**

In spite of the opportunities, members of Congress have not always availed themselves of these congressional paths of influence. Historically, the distribution of foreign policymaking power between Congress and the president has been fluid and dynamic, with neither Congress nor the president always predominant.

We begin by considering broad patterns of congressional assertiveness on foreign policy, in which we clearly see the dynamic nature of interbranch politics. Figure 9.2 presents evidence from one analysis of four different types of congressional foreign policy activity and their variance from 1945 to 1997. According to Scott and Carter (2002), when members of Congress accede to the administration's request, their behavior is “compliant.” When members modify the administration's request, delivering a result either more or less than the administration desired, their behavior is “resistant.” “Rejection” behavior is when Congress flatly refuses to enact the administration's desires. Finally, when members of Congress go beyond reacting to the administration's policy requests and proposals and choose to enact their own foreign policy agenda, their behavior is “independent” (Scott and Carter 2002:128–129). When these activities are separated into Cold War, post-Vietnam, and post–Cold War periods, they show two characteristics: (1) variance over time and (2) increasingly assertive behavior by Congress across the three time periods.

As Figure 9.2 shows, during the Cold War years presidential leadership was common (almost half of congressional action complied with presidential preferences). After Vietnam, congressional compliance with presidential leadership sharply fell,
while resistant, rejection, and independent behavior all increased substantially. In the post–Cold War period, Congress continued to challenge presidential leadership, becoming more likely to take its own independent foreign policy actions rather than just comply with presidential leadership. Now, think about the more than twenty years that have passed since the end of the data in Figure 9.2: What might you expect the breakdown of congressional activity to look like since then?

The evidence in Figure 9.2 strongly suggests a Cold War period in which presidential dominance and congressional deference prevailed, followed by a post-Vietnam period of congressional reassertiveness. Since then, we might well expect evidence from the most recent two decades to show a similar pattern, with a period of presidential dominance during the crisis atmosphere surrounding 9/11 giving way to a period of congressional reassertiveness not long after. We might also expect differences in party control of Congress and the White House to cause periods of more activity and assertiveness, while periods when the same party controlled both branches exhibit less. Let’s consider these periods and patterns of behavior in more detail to gain a better understanding of their nature and dynamics and the factors shaping them.

**Presidential Leadership in the Cold War Era**

Congress was most compliant with presidential leadership during the Cold War. However, the congressional role was more complex than a simple “presidential dominance” story, even during this time. In fact, legislative-executive relations evolved through four phases or periods during the height of the Cold War: (1) accommodation, 1944–1950; (2) antagonism, 1951–1955; (3) acquiescence, 1955–1965; and (4) awakening, 1966–1969 (Bax 1977).

*Congressional Accommodation, 1944–1950.* Initial signs of reassertiveness by Congress after World War II quickly gave way to accommodation as members of Congress collaborated with the administration to counter the Soviet threat. For example, Congress initially resisted Truman’s proposal of the Marshall Plan to counter the...
devastation suffered by Europe in the war—isolationist sentiment was still strong among members of Congress, especially Republicans. This resistance eventually gave way to support as Truman convinced Congress and the American public of the grave political instability that most European states faced from their economic situation and from the growing threat of Soviet communism. Bipartisan, collaborative efforts between Congress and the president resulted in American participation in the United Nations, the International Bank for Reconstruction and Development (World Bank), the International Monetary Fund (IMF), and the General Agreement on Tariffs and Trade (GATT). Congress also supported the National Security Act of 1947, foreign assistance to Greece and Turkey as part of the Truman Doctrine, remobilization of the military, the establishment of the North Atlantic Treaty Organization (NATO), and the permanent stationing of American troops in Europe—a peacetime American military commitment unprecedented in the nation's history.

**Congressional Antagonism, 1951–1955.** Despite the broad Cold War Consensus, conservative members of Congress were increasingly concerned that the United States was not doing enough to “win” the Cold War. As the Republican Party gained control of Congress, these concerns and the virulent anti-communism underlying them led to sweeping congressional investigations of communist threats at home, as well as growing political attacks against the Truman administration and the Democratic Party. The political right was motivated by the suspicion that communists and their liberal-left supporters had penetrated the major institutions of American society, including the executive branch, and were aiding and abetting the enemy. Conservative members of Congress accused the executive branch of allowing communists to occupy important positions, and attacked high-level administration officials such as Dean Acheson (who served as secretary of state) and General George Marshall (who served as secretary of state and secretary of defense) as a “criminal crowd of traitors and appeasers.” It was in this political climate that Senator Joseph McCarthy of Wisconsin thrived. Before its demise in 1954, McCarthyism traded on and fueled the anti-communism of the time to investigate alleged communist infiltration and treasonous behavior in the State Department, the United Nations, other parts of the federal government, the Truman administration, the Democratic Party, academia, Hollywood, and even the Eisenhower administration after the 1952 elections.

**Congressional Acquiescence, 1955–1965.** With the decline of McCarthyism, the ensuing decade constituted the height of bipartisanship and congressional compliance with presidential leadership. While pockets and episodes of congressional criticism remained (usually over not doing enough to fight the Cold War), this period was the heyday of presidential power and the president’s ability to exercise prerogative government in order to fight the Cold War in the name of national security. The president’s foreign policies rarely encountered serious challenges. Although Congress seldom gave the president all that he wanted in important areas such as defense and foreign assistance, members of Congress generally complied with presidential leadership and the growing independence of the executive branch in the making of US foreign policy. Thus, the demands of national security took precedence over all other concerns, and, according to Frans Bax (1977:887),
“the chief function of Congress became the legitimizing of presidential decisions” and the legislative-executive relationship of this period spawned the “two presidencies thesis” we discussed in Chapter 3 (Wildavsky 1966).

The Cold War Consensus and bipartisanship of this period were so strong that, in many cases, foreign policy decisions were made without consulting Congress or getting its formal approval; at best, congressional leaders might be informed after the fact. Presidential supremacy and the assumption of congressional support reached its height under Presidents Kennedy and Johnson. Not surprisingly, the fateful decisions to fully Americanize the Vietnam War were made with virtually no input from Congress. The Cold War Consensus often prevented questions from being asked about whether the United States should or should not commit itself to defend South Vietnam from communism. Rather, the questions always revolved only around how much American involvement it would take to contain communist aggression and prevent the downfall of an ally. For example, after the Gulf of Tonkin incident in August 1964, members of Congress rushed the Gulf of Tonkin Resolution through rather than seriously debating the pros and cons of the resolution submitted by President Johnson. The vote was unanimous: 416–0 in the House of Representatives and 88–2 in the Senate.

**Congressional Awakening, 1966–1969.** Congressional uneasiness with Cold War policies and presidential leadership began to emerge even before the escalation of American involvement in Vietnam. According to Johnson (2006) and Carter and Scott (2009), in the early 1960s key individuals in Congress such as J. William Fulbright, Wayne Morse, Ernest Gruening, and Stuart Symington led a “foreign aid revolt” that challenged the amounts, priorities, and purposes of US assistance. These “entrepreneurs” challenged the White House in an effort to recast foreign aid (away from military aid) and place restrictions on it (especially to dictators). Such efforts paid off and, by the mid-1960s, the Johnson administration had been forced to accept a variety of restrictions. As one scholar commented, “The foreign aid revolt had succeeded beyond anything [its initiators] could have imagined. In the process a new era in executive-legislative relations was inaugurated” (Johnson 2006:104).

By 1966, such uneasiness had spread to US foreign policy in Vietnam. Total troop levels exceeded 550,000, but there still seemed to be no “light at the end of the tunnel” (a phrase that came to be associated with President Johnson’s and General William Westmoreland’s optimistic spin on how the war effort was going). As a result, some members of Congress began to criticize the administration’s lack of restraint in and overemphasis on the use of force. Determined to inject a different point of view into the decision-making process, the leading critics in Congress began a series of congressional investigations of American policy in Vietnam.

These efforts to broaden the debate and scrutinize administration decisions were best symbolized by the hearings convened by the Senate Foreign Relations Committee under the chairmanship of J. William Fulbright (D-AR). Once a “Cold Warrior” in support of administration policy, Fulbright moved steadily from private to public dissent in the 1960s over the Vietnam War. As President Johnson’s perspective narrowed and groupthink among his advisers prevailed (see Chapter 10), Fulbright moved from private objections to outright dissent by 1965. As he characterized it (Fulbright 1966:28–29):
Since 1961, when the Democrats came back to power, I have made recommendations to the President on a number of occasions through confidential memorandums. In April, 1965, I sent President Johnson a note containing certain recommendations of the war in Vietnam, recommendations which I reiterated thereafter in private conversations with high Administration officials. When it became very clear that the Administration did not find my ideas persuasive, I began to make my views known publicly in the hope, if not of bringing about a change in Administration policy, then at least of opening up a debate on that policy.

On April 5, 1965, Fulbright sent a memorandum to President Johnson challenging the intervention. When that failed to change the president’s course, Fulbright then became more public in 1966 when he began “televised” Foreign Relations Committee hearings to focus on the shortcomings of US policy in Vietnam and expanded his public critique of Vietnam policy. While members continued to appropriate funds to support the troops in Vietnam, more and more members became uncomfortable with—and willing to challenge the president over—the lack of progress in the war effort and the administration’s failure to consult with them on crucial questions of war and peace. Members also began to question the logic of key foreign policy strategies such as containment, and the Cold War Consensus that had muted foreign policy competition began to fracture. This congressional awakening set the stage for the congressional reassertion in legislative-executive relations that dominated the post–Vietnam War years.

The Post-Vietnam Congressional Resurgence

In the late 1960s, with the Cold War Consensus a casualty of the Vietnam War, Congress began to reassert its constitutional authority in the making of US foreign policy. This reassertion occurred for a number of complementary reasons, many of which had to do with the Vietnam War. First, the war was not going well. Over half a million American troops and $30 billion a year were not producing the light at the end of the tunnel that President Johnson and General Westmoreland were proclaiming. In fact, with what became known as the Tet Offensive in early 1968, the North Vietnamese successfully contested most of South Vietnam for a short time, occupying major cities and even the American embassy in Saigon before being defeated. Second, growing segments of the American public began to question President Johnson’s handling of the unsuccessful war. Third, US policy in Vietnam was increasingly criticized by other countries, including the United Kingdom, France, and other American allies in Europe. Fourth, Republican Richard Nixon’s victory over Democrat Hubert Humphrey in the election of 1968 resulted in divided government and added a more partisan dimension to legislative-executive relations. Finally, although Nixon began to withdraw US troops as part of a strategy of Vietnamization (to turn the war over to the South Vietnamese), he also escalated the levels of military conflict and bombing to achieve “peace with honor”—which increasingly politicized everything.

A classic struggle between the legislative and executive branches ensued. Members of Congress became increasingly active in the making of US foreign policy, demanding
from the president and the executive branch more information, consultation, and participation in policymaking. In fact, by 1973, Congress cut off all funding of direct American military involvement in the Vietnam War; and with the end of the war, congressional reassertion intensified. In 1973, the War Powers Act was passed over President Nixon’s veto, followed shortly by the Budget and Impoundment Control Act of 1974, and a series of additional direct and indirect legislative efforts to rein in the White House and reassert congressional foreign policy influence.

Not surprisingly, President Nixon resisted congressional reassertion every step of the way. But the end of the Vietnam War, the Watergate affair, and concerns over controversial Cold War policies released a flood of congressional involvement in foreign policy. In addition to efforts to end the Vietnam War, over the ensuing fifteen years or so, Congress inserted itself into practically every corner of US foreign policy. For example, Congress asserted itself in the diplomatic arena, requiring that executive agreements be reported to Congress for review. Congress also tackled military aid, foreign aid, and arms sales policies and processes, giving itself greater control in both areas. Substantively, Congress tackled US policies toward many different countries, required human rights and democracy to be considered in US assistance and diplomacy, resisted a variety of arms control and other treaties, and became increasingly involved in defense policy. On intelligence, Congress strengthened legislative oversight in a series of actions between 1975 and 1980, while also establishing new procedures, requirements, and restrictions on nuclear export laws. In the 1980s, Congress continued to assert itself, resisting the Reagan administration’s policies on arms control and Central America, and, in the case of South Africa, applying sanctions against the apartheid regime over administration resistance and, ultimately, a presidential veto.

Understanding Congressional Reassertiveness

After Vietnam, all presidents faced a more powerful, less compliant Congress. Presidential leadership faced new challenges as changes in the post-Vietnam political environment resulted in the relative decline of presidential power and the rise of congressional involvement. A number of factors explain both the efforts to reassert congressional influence and the success in doing so. First, and probably most important, congressional deference and support was in large part a consequence of the Cold War Consensus, or shared views about the US role in the world and the strategies to follow to pursue US interests (Melanson 2005). With Vietnam, Watergate, and other changes in the 1960s and 1970s, the Cold War Consensus that provided for presidential dominance eroded, paving the way for greater congressional activism.

Second, the level of congressional activism on foreign policy depends, at least in part, on the international context, especially the level of threat facing the country, and on the success of presidential policies (Lindsay 2003). As one observer argues, after Vietnam “many Americans became convinced that communist revolutions in the third world posed no direct threat to core U.S. security interests, just as détente persuaded many that Leonid Brezhnev’s Soviet Union posed less of a threat to core U.S. security interests” (Lindsay 2003:533). Moreover, Vietnam, intelligence abuses, the excesses of the Nixon administration, and other issues convinced many observers that Cold War policies were anything but successful.
Third, Congress enacted a number of major institutional changes that led to a more diverse, representative, decentralized, open, informed, and independent Congress, contributing to its post-Vietnam reassertion (Crabb and Holt 1992; Ripley 1988). Four of these changes are most important.

**Membership.** Congress experienced a major turnover in its membership beginning in the 1970s. Changes occurred in region, party, and ideology. Throughout the Cold War years of the 1950s and 1960s, both the House and the Senate were dominated by southerners, members of the Democratic Party, and political conservatives. The situation changed during the early 1970s. By this time, many of the more powerful southern Democrats were replaced by younger members of Congress who still tended to be Democrats but were less conservative. This situation resulted in a new Democratic leadership that was much more liberal, much less southern, and much more willing to be assertive in foreign policy. The rise of the new leadership was reinforced by the 1974 post-Vietnam War and post-Watergate congressional elections, in which Republicans faced major losses, resulting in a large influx of new liberal Democrats into Congress. The new Democratic leadership, in coalition with the new members of Congress, took a more activist congressional role in US foreign policy (Bernstein and Freudenberg 1977). In the late 1970s and early 1980s, when Republicans gained seats in Congress (including a majority in the Senate from 1981 to 1987), the new members tended to be more conservative. The overall result of these changes in membership has been a more diverse, representative, polarized, and politicized Congress that contains very active liberal and conservative members.

**Committees.** Not only did the change in congressional membership during the 1970s produce changes in the distribution and exercise of power within Congress, but the new Democratic liberal leadership also changed the congressional committee rules of the game. Power was stripped from committees and in particular from committee chairs. Every committee was now required to have multiple subcommittees, subdividing both issues and committee membership, and no committee member could be chair of more than one of its subcommittees. Thus, power moved from committees and committee chairs to subcommittees and subcommittee chairs. More committees (and subcommittees) also gained jurisdiction over foreign policy issues. For example, new committees covering intelligence and the budget were created, and many other committees have become more active in foreign policy. This has been especially the case for other types of international (and intermestic) issues, such as trade, finance, energy, transportation, communications, tourism, technology and space, immigration, and the environment—all of which have grown in importance in foreign policy. These changes have resulted in greater committee and congressional involvement in the making of US foreign policy. (See Tables 9.1 and 9.2 for lists of relevant committees in the current Congress.)

**Congressional Norms and Procedures.** Structural and procedural changes reduced (but did not eliminate) the importance of seniority, reciprocity, public collegiality, and other norms, contributing to an increase in the number of members seeking to put their stamp on policy. Moreover, congressional reforms during the 1970s resulted in a much more open and democratic process instead of committee activity occurring behind
TABLE 9.1
Senate Committees with Jurisdiction over Foreign Policy (116th Congress, 2019–2020)

<table>
<thead>
<tr>
<th>Relevant Committees (Total Subcommittees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Nutrition, and Forestry (5)</td>
</tr>
<tr>
<td>Appropriations (12)</td>
</tr>
<tr>
<td>Armed Services (7)</td>
</tr>
<tr>
<td>Banking, Housing, and Urban Affairs (5)</td>
</tr>
<tr>
<td>Budget (0)</td>
</tr>
<tr>
<td>Commerce, Science, and Transportation (6)</td>
</tr>
<tr>
<td>Energy and Natural Resources (4)</td>
</tr>
<tr>
<td>Environment and Public Works (4)</td>
</tr>
<tr>
<td>Finance (5)</td>
</tr>
<tr>
<td>Foreign Relations (7)</td>
</tr>
<tr>
<td>Homeland Security and Governmental Affairs (3)</td>
</tr>
<tr>
<td>Intelligence</td>
</tr>
<tr>
<td>Judiciary (6)</td>
</tr>
<tr>
<td>Veterans’ Affairs (0)</td>
</tr>
</tbody>
</table>


closed doors. Most formal committee activity is now open to the media and the public. Furthermore, voice votes (the option to vote as a group and thus remain unaccountable) have been mostly replaced by roll call votes, in which each member must take an independent public stand on the issue. While informal interaction, bargaining, and highly sensitive work such as intelligence continue to occur behind the scenes, congressional procedures are more open today than in the past (as reflected in C-SPAN television coverage of House and Senate hearings and proceedings in the two chambers).

**Staffing.** Congressional reformers in the 1970s realized that the small legislative support staffs made Congress dependent on the executive branch for information. Consequently, they expanded congressional staffs tremendously during and after Vietnam. Individual representatives and senators began to enjoy the presence of large personal staffs. Committee staffs for both the majority and minority parties, such as for the Senate Committee on Foreign Relations, also expanded tremendously. Congress also increased the size of its support agencies and began using them consistently. For example, the Government Accountability Office (GAO), the largest support agency, employing almost 20,000 people, is the investigative arm of Congress and engages in oversight of the executive branch. The Congressional Research Service (CRS) provides research and analysis on issues of importance to congressional committees and individual members of Congress.
Finally, the Congressional Budget Office (CBO), created in 1974 to provide financial and budgetary information and assessments, gives Congress an alternative to reliance on the executive’s Office of Management and Budget.

Overall, these changes provided the foundation for members of Congress to become more active in the making of foreign policy. These changes greatly complicated the White House’s ability to control the agenda and enact the president’s preferred policies, as they empowered a wider range of members within committees and on the chamber floors.

### CONGRESS AFTER THE COLD WAR

The end of the Cold War in 1989 provided further incentives for congressional engagement on foreign policy. The collapse of the Soviet Union and the decline of communism...
dramatically reduced the level of threat facing the country. As one observer aptly commented, “It’s like Las Vegas; when you reduce the size of the ante, more people come to the table” (quoted in CQ Press 1999:9). Moreover, intermestic issues and increasing constituency pressures have led to greater congressional challenges to presidential leadership on a variety of issues. Also, the cost or risk of challenging the president diminished because of a decline in public interest in international matters (Lindsay 2000). Consequently, not only have presidents had greater difficulty enacting their priorities, but the changed issue agenda also increased the willingness of members of Congress to challenge the president on foreign affairs (Marshall and Prins 2002). Three features of the two decades of the post–Cold War years are especially important for understanding Congress and its role and influence in the politics of US foreign policy.

Polarization and Partisanship.

When it comes to Congress, the post–Cold War environment is one of increasing ideological polarization and partisanship (Jeong and Quirk 2017; Jochim and Jones 2012; Martini 2015; Milner and Tingley 2015; Peake 2017). Since the end of the Cold War, these ideological and partisan divides affect virtually every congressional arena: party leaders, the

**FIGURE 9.3**
Mean Ideology Scores by Party, 102nd–113th Congresses

![Graph showing mean ideology scores by party for 102nd to 113th Congresses](https://www.voteview.com/about)

*Source:* Data from DW-Nominate (https://www.voteview.com/about).
voting of rank-and-file members on foreign and defense policy issues, and the behavior
of individual members of Congress who are especially attentive to foreign policy (e.g.,
Carter & Scott 2009, 2010; DeLaet & Scott 2006; Lantis 2019; Marsh & Lantis 2018;
McCormick, Wittkopf, & Danna 1997; Rohde 1994; Sinclair 1993; Smith 1994; Wittkopf

Figure 9.3 shows the growing ideological gap between Republicans and Democrats
in Congress from 1991 to 2014. The gap has only widened since then. With ideolog-
ical polarization almost doubling since the end of the Cold War, manifestations of the
growing partisanship also increased. For example, in terms of party unity voting—where
members vote with their own party—according to the Washington Post’s “Congress Votes
Database,” members voted with their respective parties about 80–85 percent of the time
at the end of the Cold War, but 90–95 percent of the time by 2015. Members also became
increasingly supportive of presidents of their own party, and increasingly resistant to those
of the other party after the Cold War, according to presidential support scores from the
Texas A&M Presidential Data Archive (but see “A Different Perspective: Is Bipartisanship
Really Dead?”).

A Different Perspective

IS BIPARTISANSHIP REALLY DEAD?

Many politicians and academic studies lament the
demise of bipartisan cooperation in US foreign
policy, and evidence of the partisan rancor on
Capitol Hill and between Congress and the presi-
dent is not hard to find. However, in the changing
international and domestic environment of the
past decade or so, some evidence suggests that
rumors of the death of bipartisanship have been
exaggerated, to paraphrase Mark Twain.

In late 2018, the Center for Strategic and
International Studies released Beyond the Water’s
Edge: Measuring the Internationalism of Congress,
a report on the foreign policy views of members
of Congress. According to this report, in contrast
to simpler, Cold War-era ideological positions
ranging from right to left, conservative to liberal,
or isolationist to internationalist, today members
of Congress tend to hold one of three foreign
policy orientations. These orientations are order-
driven members, who emphasize preservation of
the post–World War II liberal international order;
values-driven members, who ground their calls
for US engagement in statements of guiding val-
ues embracing human rights, religious values, or
democracy promotion; and limits-driven members,
who desire to minimize the risks and costs associ-
ated with US international engagement. According
to the report, Republicans and Democrats can be
found in each of these orientations, which suggests
good prospects for cooperation across party lines
on issues such as foreign aid, countering cybersecu-
rity threats and challenges from Russia and China,
trade, oversight and limits on the use of force, coun-
tering global authoritarianism, and others.

According to recent research by Jordan
Tama, an associate professor in the School of

(Continued)
Tama’s evidence indicates foreign policy voting by Congress shows high percentages of classic bipartisanship, anti-presidential bipartisanship, and cross-partisanship. His insights also mesh well with the Center for Strategic and International Studies report (see Tama 2018b), and his perspective is supported by the research of others (e.g., Chaudoin et al. 2010; Jochim and Jones 2012; Trubowitz and Mello 2011).

What does this different perspective on foreign policy orientations and the nature of cross-party cooperation suggest for the effect of the legislative-executive relationship on foreign policy?


Studies show that congressional partisanship and polarization have affected general levels of congressional activity and assertiveness in the post–World War II era; and they have had an impact on presidential decisions to use force, negotiate executive agreements and treaties, enact economic sanctions, and provide food assistance, among other things (e.g., Carter and Scott 2009; DeLaet and Scott 2006; Howell and Pevehouse 2007; Martin 2000; Scott and Carter 2002; Smith 1994). As David Rohde (1994:99) has argued, “Congress has grown increasingly assertive in foreign and defense policy and . . . conflict over these issues has grown increasingly partisan.” Which party controls Congress and the White House is more significant than ever, as both partisanship and the lack of consensus make foreign policy more like politics as usual.

Divided Government

As we first discussed in Chapter 3, divided government has become the norm for Washington, DC. Increasingly, Congress and the presidency are led by members of the
opposing political parties. From the 59th Congress to the 88th Congress (1905–1965), the White House and at least one chamber of Congress were controlled by different parties in just seven congresses. From the 89th Congress to the 100th Congress (1965–1989), government was divided eight times; and since 1989 (101st–116th Congresses), the White House and at least one chamber of Congress have been controlled by different parties ten times.

The existence of divided government is consequential because members of the party in opposition to the president can exercise greater control within Congress as a result of their majority status. This gives the opposition party the ability to dominate the organization of Congress—in leadership positions (such as Speaker of the House and Senate majority leader), as chairs of committees and subcommittees, and with majority representation on each and every committee and subcommittee. Hence, President Clinton, a Democrat, had to deal with a Congress that was dominated by Republicans; President George W. Bush had to deal with divided government in the first two and last two years of his presidency; President Obama faced a House of Representatives in Republican hands after the 2010 midterm elections, and a Republican-led Congress after 2014; and President Trump faced a partially divided government when Democrats won majority control of the House of Representatives in the 2018 midterm elections.

With divided government, political incentives for congressional activity and assertiveness increase, making White House leadership on foreign policy more complicated. Moreover, in four of the ten congresses since 2001, Congress itself has been divided, with different parties controlling each chamber. Although a divided Congress gives the White House political allies controlling one chamber on Capitol Hill, it also introduces the added complication of partisan strife between the chambers, which may make leadership from both Congress and the White House more difficult.

The Politics of Threat

In the post–Cold War context, a third important feature has been the salience of the politics of threat. As Howell, Jackman, and Rogowski (2013) conclude in *The Wartime President: Executive Influence and the Nationalizing Politics of Threat*, when political debates focus on national threats and priorities, Congress is more likely to defer to the president’s policy preferences. When the threat context is amplified in the national debate, power tends to flow toward the president and the executive branch. During times of peace, or when the political debate over threat is less salient, power tends to flow back to Congress, as Schlesinger (1989) argued in *The Imperial Presidency*. In periods of perceived national emergency, Americans in government and society are also likely to turn to the president and rally behind him or her and the exercise of “prerogative power” (see Chapter 3) to address the situation.

As we noted, with the end of the Cold War, the focal point of more than four decades of US foreign policy disappeared and, along with it, the clarity of the Soviet threat as a peer competitor to the United States. In the more benign but complicated environment of the post–Cold War world, presidents have found that the threat environment has played a significant role in the interactions between the legislative and executive branches. Not surprisingly, when threat—and thus interests—are clearest, congressional assertiveness tends to be
muted and White House foreign policy leadership enhanced, as was the case in the high-threat environment during the height of the Cold War. This has led to a “politics of threat,” in which variation in the clarity of threat and interests—and the claims of these things by presidents and members of Congress—have affected levels of congressional assertiveness or support toward the White House, especially by the party opposite the president. Thus, in the post–Cold War context, as Howell et al. (2013) argue, the perceived threat of terrorism and wars in Afghanistan and Iraq expanded presidential power and leadership.

**Impact on Congressional Foreign Policymaking**

In the post–Cold War context, these three factors have combined to shape congressional foreign policy activity and legislative-executive relations. Throughout the past two decades, the White House has faced a series of congressional challenges across a whole host of foreign policy issue areas, major and minor. For example, in the face of divided government, the Clinton administration watched four major international agreements fall to congressional, mostly partisan, opposition (the comprehensive test ban, land mines, global warming, and international criminal court agreements). Similarly, Congress dismantled both the administration’s attempts to prioritize democracy promotion and sustainable development as foreign policy goals and its strategy for coping with ethnic conflict and instability. Efforts to strengthen the ability of international organizations such as the United Nations and the International Monetary Fund to respond to global problems were resisted and restricted, and the administration was forced to accept, despite its strenuous opposition, the restructuring of the foreign agencies, increased defense spending, covert assistance to promote regime change in Iraq, strengthened primary and secondary sanctions on Cuba, and a host of other issues driven by Congress (e.g., Scott 1998).

Prior to September 11, 2001, Congress appeared poised to provide the administration of George W. Bush with similar challenges on issues ranging from the United Nations to defense strategy and spending to national missile defense and arms control to trade, especially after Vermont Senator Jim Jeffords left the Republican Party, giving the Democrats the majority in the Senate. Then terrorists struck New York City and Washington, DC, and the ensuing state of emergency generated a dramatic shift, and the level of threat and public concern with international affairs surged. Congress almost immediately rallied behind the White House in the face of this crisis. For example, as James Lindsay (2003) describes, members of the president’s party dropped their opposition to repaying American dues to the United Nations, while Democrats gave in to the president’s position on national missile defense without a fight. Congress also cooperated or acquiesced in granting sweeping new powers for homeland security and intelligence operations and a series of additional issues. Most important, Congress granted broad authorization to the president to use force, first in Afghanistan in 2001 and then, in a 2002 vote, in Iraq as well. These two congressional authorizations were not as sweeping as the original administration requests, but they were as much “blank checks” as the 1964 Gulf of Tonkin Resolution (Kassop 2003).

However, as the 9/11 attacks receded into the past, and as the costly American military intervention into Iraq ground on with little sign of ending, the state of emergency and concomitant threat context relaxed, and the increasingly polarized and partisan Congress grew
restless on a variety of international issues, including homeland security, intelligence reform, and trade. In 2005 and 2006, congressional Democrats were increasingly bold in their opposition to the administration, and even some Republicans began to join in as the public’s discontent with President George W. Bush and the war in Iraq grew (e.g., John Warner and Richard Lugar on new strategies and benchmarks for the Iraq war; John McCain on a ban on torture; see Broder 2005; Hulse 2005). Other challenges on issues such as immigration also ensued, leading one observer to flatly declare the “the Bush era . . . isn’t over. . . . But the 9–11 era is” (Rozen 2005). Such assertiveness across a whole range of foreign policy issues grew significantly stronger when the Democratic Party won majorities in both chambers of Congress in the 2006 midterm elections in what was widely understood as a referendum on the Bush administration’s foreign policy.

These patterns continued into the Obama and Trump administrations as well. Divided government and partisanship proved good predictors of legislative-executive relations as Democrats in Congress adopted a more supportive approach to the Obama administration, and Republicans in Congress were substantially more supportive of the Trump administration, even despite its highly volatile and controversial foreign policy positions.

During the 111th Congress (2009–2010), Republicans in the minority in Congress seemingly took every opportunity to criticize and attack the democratic administration’s foreign policy. After the November 2010 elections, the Republicans gained the majority in the House of Representatives and reduced the Democratic majority to a 53–47 advantage. In the ensuing 112th Congress, foreign policy challenges from Congress, especially the House, ramped up. For example, Obama was only narrowly able to secure approval of his New START nuclear arms control treaty with Russia by a 71–26 vote (67 votes were required) and then only after a lengthy debate and the addition of amendments to placate Republicans. The economy clearly dominated the agenda. Obama, the Democrats, and the Republicans fought constant partisan battles and were in continual “gridlock” over issues such as the economic recovery, the budget, and the debt—leading the government to almost shut down at one point (see Bohan, Sullivan, and Ferraro 2011). The partisanship was intensified by divided government, ideological differences, and political one-upmanship.

The 2012 elections returned Obama to a second term, extended the Democratic majority in the Senate by two seats to fifty-five, and narrowed the Republican majority in the House by eight seats (234–201). However, the 2014 midterms put Republican majorities in control of both chambers, and congressional activism and opposition to administration foreign policy accelerated. Indeed, with no prospects for legislative support, Obama turned to executive orders and executive agreements to address immigration, improve relations with Cuba, conclude a multilateral agreement to control Iran’s pursuit of nuclear weapons, and join a global accord to combat climate change. The Republican-led Congress opposed each of these actions and, when the Trump administration succeeded the Obama administration in 2017, the more tenuous nature of each of these presidential steps led to the new administration’s ability to undo each of them, also by executive order.

The Republican-led Congress proved much more supportive of the Trump administration than its predecessor, but even so, it took action to address concerns about the Trump approach. For example, the Trump administration proposed steep cuts to the US foreign aid budget and State Department funding in each of its first three years. In foreign
aid, these cuts ranged from 25 percent to 35 percent of the budget. Even with Republicans in control of both branches, these proposals failed in Congress. Republican leaders simply refused to support the president’s requests. Similarly, despite strong opposition from the White House, the Republican Congress legislated a strong sanctions bill against Russia in response to its attacks on the US elections, interference in European politics, and aggression in Ukraine. The veto-proof majorities in both chambers forced the administration to sign the legislation into law and, although President Trump delayed implementing the sanctions for as long as possible, the administration was forced to begin applying them in the spring of 2019.

In November 2018, Democrats swept into the majority in the House of Representatives and immediately ramped up challenges to the Trump administration. In 2019, legislative efforts on foreign aid, the use of military force, countering Russian election interference, trade, human rights, and other matters took shape in the House. Many of these efforts resulted in bills that passed the lower chamber. Committee hearings and oversight activities on a variety of subjects also increased in the House, including the start of the impeachment process in the fall of 2019 over President Trump’s efforts to force Ukraine to interfere in the 2020 US election. Even the Republican-controlled Senate got in on the act on key issues such as the use of force in Yemen and Iran (Mascaro 2019). As one observer summarized,

So what’s the common theme among these signs of Congress’ reasserting itself in foreign policy? . . . It’s precisely Congress’ growing frustration with Trump’s foreign policy that appears to be motivating this reemergence. (Geltzer 2019)

And President Trump’s response? The White House ramped up its own partisan attacks on Democrats in Congress, engaged in partisan pressure on its Republican allies, and cast key foreign policy priorities in terms of crisis and national emergency to gain advantage in the politics of threat.

CONGRESSIONAL BEHAVIOR IN FOUR POLICY AREAS

Now that we have examined the context, multiple congressional actors and paths of influence, and overall patterns of legislative-executive relations in foreign policy, let’s finish by considering congressional activity and influence in four general issue areas: (1) the war powers, (2) advice and consent, (3) the power to appropriate funds and to make laws, and (4) the power of oversight and investigation.

The War Powers

The use of American armed forces abroad has been the factor most responsible for the growth of presidential power and the straining of relations between Congress and the president. According to Louis Henkin (1987:290), “There is no evidence that the framers contemplated any significant independent role—or authority—for the President as the Commander in chief when there was no war.” Yet Congress has declared war just five times
in American history, while presidents have committed military forces abroad in more than 200 instances. Therefore, as discussed earlier, the president’s power over questions of war has grown remarkably over time. Only after the bitter experience with the Vietnam War did Congress attempt to redress the imbalance, eventually overriding a veto by President Nixon to enact the **War Powers Act**.

The War Powers Act was designed “to fulfill the intent of the framers of the Constitution of the United States and ensure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces” into conflict situations abroad. The act has three central requirements:

1. **Presidential Consultation:** According to the War Powers Act, “the President in every possible instance shall consult with Congress before introducing United States Armed Forces” into situations of conflict abroad and “after such introduction shall consult regularly with the Congress until” they have been removed from such situations.

2. **Presidential Reporting:** According to subsection 4(a) of the act, the president shall submit a report to Congress within forty-eight hours if, in the absence of a declaration of war, US armed forces are introduced abroad under the following three situations:
   
   a. “into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances”
   
   b. “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”
   
   c. “in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation”

   A report is required to describe the circumstances, the president’s constitutional and legislative authority, and the estimated scope and duration of involvement. If US armed forces remain in a situation of hostilities in accordance with subsection 4(a)(1), the president must continue to report to Congress at least every six months.

3. **Congressional Action:** If US armed forces are introduced into a situation of hostilities as stipulated in subsection 4(a)(1), the president must terminate their involvement within sixty days unless Congress extends the deadline. The president can extend the deadline for an additional thirty days, if deemed necessary for the safe withdrawal of American troops. Congress may pass a “concurrent resolution” to terminate the military intervention earlier; this requires a simple majority in both chambers and is not subject to presidential veto. Second, Congress may pass a “joint resolution,” signed by the president, to extend the deadline. Finally, Congress may do nothing, allowing the time limitation to take effect.
The War Powers Act represented a major effort at congressional reassertion and complicates the president’s ability to use force abroad. On the surface, the act may not appear much more than symbolic. Since 1973, presidents have used US armed forces abroad in numerous situations involving the War Powers Act. In each case, the president initiated, formulated, and approved the use of force with little or no consultation—informing members of Congress only after a decision had been made given his role as commander in chief.

However, the War Powers Act does enable Congress to influence the president’s decision to use troops abroad through the reporting requirement and its ability to terminate, modify, or approve military action if US troops are committed. As Kriner (2010) shows, individual members of Congress engage in a variety of activities—public framing, hearings, proposing legislation, and others across the range of the avenues of influence we described—before, during, and after uses of force that influence such decisions. Since the War Powers Act was passed, presidents must be cautious in deciding when, where, and how US troops are to be committed. Indeed, studies by Howell and Pevehouse (2007) and Auerswald and Cowhey (1997) show that the act changed the decision-making environment and made presidents much more selective in their decision to use force.

The first major test of the War Powers Act occurred when President Reagan deployed 1,500 American troops in Beirut from September 1982 to March 1984 to promote stability in Lebanon. When Reagan sent US troops (along with British, French, and Italian troops) to Beirut, he reported to Congress in accordance with the act. However, he also stated that there was no intention or expectation that US armed forces would become involved in hostilities, thereby circumventing the time limitation and Congress’s further participation. (US Congress, House Committee on Foreign Affairs 1982). As the conflict in Beirut escalated and American troops were fired upon, a major debate ensued and members of Congress and the president appeared to be heading toward a constitutional crisis over the war-making power. But a legislative-executive compromise was negotiated in which Congress agreed to activate subsection 4(a)(1), indicating a situation of hostilities, by passing a joint resolution that the president would acknowledge by signing. In return, the president received congressional support to use military troops in Lebanon for up to eighteen months. However, President Reagan issued a statement to accompany the signing of the resolution that effectively rejected the legitimacy of the War Powers Act, which has become the norm.

The recent cases of Afghanistan and Iraq are also instructive. First, in both cases, the George W. Bush administration decided to use force with little involvement or consultation with Congress. In fact, in the Iraq case, the administration made the decision much earlier than it was publicly acknowledged and made a number of efforts to conceal the choice from Congress and the public. Nevertheless, in both cases the president received broad congressional authorization for the use of force (although not as broad as the president wanted), nor was the War Powers Act acknowledged or invoked (Kassop 2003; Packer 2005; Woodward 2004).

Within three days of 9/11, on September 14, the House voted 420–1 and the Senate voted 98–0 in support of a 9/11 military force resolution, initially submitted by President Bush,
that the president is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on Sept. 11 or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

In the more specific Iraqi resolution, Congress authorized the president to “use the Armed Forces of the United States as he determines to be necessary and appropriate to (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council Resolutions.” This resolution passed the House 296–133 and the Senate 77–23.

In Obama’s 2011 decision to use force against Libya in support of the resistance to Moammar Ghaddafi’s rule, the administration did not bother to consult prior to the introduction of US forces, maintaining that its briefings of members on the operations were sufficient given Obama’s role as commander in chief. In fact, the administration maintained that the War Powers Act did not even apply because “U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops” (Savage and Landler 2011). Despite complaints and efforts by Congress to force the administration to adhere to the ninety-day clock and seek congressional approval, including a bipartisan resolution condemning the action passed by the House of Representatives, the administration continued its use of force. Even a lawsuit by Dennis Kucinich (D-OH) and nine other members did not succeed in persuading the administration to observe the War Powers Act, but the context of the act’s constraints contributed to limits on the nature and duration of the US action, and the furor died down as the US role shifted to less active efforts in the late summer of 2011.

Most recently, in 2019, Congress responded to concerns about the Trump administration’s involvement in the conflict in Yemen (alongside Saudi Arabia) and the potential for military conflict in Iran. As a consequence, in April both the House and the Senate passed bipartisan legislation calling for an end to US military support and involvement in the conflict in Yemen, invoking the War Powers Act and relying on it to do so. However, President Trump vetoed the measure and, though a substantial number of Republicans in both chambers supported it, Congress lacked the votes needed to override the veto (Benen 2019; Golshan 2019). As concerns over the administration’s intentions toward Iran grew, members of the House began efforts to repeal the 2001 Authorization for Use of Military Force to which the Bush, Obama, and Trump administrations all referred in support of their decisions involving the use of the American military. Barbara Lee, a Democrat from Texas who was the only member of Congress against the 2001 authorization, took the lead in the effort, introducing new legislation to limit President Trump.

In sum, the War Powers Act has given Congress the potential to play a more active role in the use of force abroad. The act has been of major symbolic importance in promoting congressional reassertion in foreign policy and has served as a model for other legislation. The act is indicative of a more assertive Congress and a transformed political environment since Vietnam. It may even have changed the environment and influenced future decisions to use force. However, members of Congress have been cautious in challenging presidential initiatives in so vital a matter even though presidents must be
much more cautious today than in the Cold War years. The typical response to hostilities by most members of Congress and the public is to “rally round the flag” in support of the president—the September 11 attacks being the most obvious recent example.

**Advice on and Consent to Appointments and Treaties**

The Senate has the constitutional authority to advise presidents on and consent to their appointments and treaties. These are two areas in which senators possess power in foreign policy matters that members of the House of Representatives do not share, helping to account for the Senate's greater prestige and power within Congress. These powers also give individual members opportunities to shape policy by giving them some influence over personnel, as well as opportunities to link advice and consent on appointments and treaties to other policy concerns.

With respect to presidential appointments, since World War II members of the Senate have tended to be hesitant to exercise this power too aggressively (Franck and Weisband 1979; Johnson 1985, US Congress, House Committee on Foreign Affairs 1982). Indeed, the Senate has tended to rubberstamp ambassadorships and presidential appointments to the executive branch, especially for lower level appointments. However, as we discussed in Chapter 3, presidents have taken longer to appoint personnel—with President Trump failing to fill a remarkably high number of positions and leaving others to “acting” personnel. The Senate confirmation process has also become slower and more cumbersome over the years, often taking months (Ornstein and Donilon 2000). Moreover, partisanship has increasingly impacted the appointment process, so that some appointments (especially to the Supreme Court) result in serious political fights. According to Stack and Campbell (2003:29),

Some senators routinely take advantage of their leverage to foil presidential nominations if they consider the nominees are out of step with existing congressional majorities. Others regard advice and consent not as a mere formality but as an important constitutional weapon guarding the independence of Congress from the executive branch.

It is not unusual for at least one major presidential appointment to draw a great deal of attention and political controversy—and even fail or have to be withdrawn—during a president's term of office. Examples can be found in every presidency. Congressional impact can occur at different, and sometimes less visible, levels as well. The late Jesse Helms, a Republican senator from North Carolina, was particularly active in the appointment process. As a member of the Committee on Foreign Relations, he held up and criticized many appointments made by Reagan and the elder Bush for holding insufficiently conservative views. When Helms became chair of the Foreign Relations Committee in 1994, he successfully blocked several of President Clinton's appointments, engaging in “hostage-taking” by blocking an appointment “in order to extract concessions from the president” (Stack and Campbell 2003:29; see also Carter and Scott 2009) (see “A Closer Look: Jesse Helms Tackles the Foreign Affairs Agencies”). Hence, whether members object to a particular individual, or seek to link appointments to other issues to gain leverage, the appointment process ensures the potential for their influence.
A Closer Look

JESSE HELMS TACKLES THE FOREIGN AFFAIRS AGENCIES

In 1995, Senator Jesse Helms (R-NC) became chair of the Foreign Relations Committee and initiated a campaign to restructure the foreign affairs agencies of the US government. Helms first raised the restructuring initiative in 1994, demanding the abolition of the US Agency for International Development (USAID), the Arms Control and Disarmament Agency (ACDA), and the US Information Agency (USIA). That same year he also tried to freeze all assistant secretary of state nominations pending reorganization. Helms’s campaign centered on a legislative proposal that called for the elimination of the three agencies just noted (whose functions would be merged into the State Department) and changes to streamline and centralize the State Department. His committee completed its work on his Foreign Relations Revitalization Act of 1995 in May, and it was ready for the Senate floor in July 1995.

However, Helms’s reform initiative met with opposition from the Clinton White House and the foreign policy agencies themselves. Faced with this determined resistance, Helms escalated his efforts. He halted business meetings of the Senate Foreign Relations Committee, blocked more than a dozen treaties and other international agreements, including the second Strategic Arms Reduction Treaty and the Chemical Weapons Convention (CWC), so that they could not be voted on by the full Senate. Helms also froze State Department promotions and held up thirty ambassadorial nominations and one assistant secretary of state nomination.

A stalemate ensued. Lacking sixty votes to overcome a filibuster, Helms could not take his bill to the floor for a vote. The administration could not get its nominees confirmed or its international agreements ratified because Helms would not allow them out of his committee. Months of bargaining followed. In August, Helms managed to obtain a personal meeting with the president, and he released a group of the nominees and a handful of minor treaties to the Senate floor in response. In December, a deal was reached in which Helms agreed to release eighteen ambassadorial nominations, several minor tax treaties, and both the START II arms control treaty and the CWC in return for action on his restructuring initiative. This deal collapsed in 1996 when the House of Representatives tried to link payment of American UN arrears to international family planning issues, prompting President Clinton to veto the bill in April.

After the 1996 election, Helms revived the initiative, offering the **Foreign Affairs Reform and Restructuring Act of 1997** and informing his colleagues and the administration that ambassadorial appointments and the CWC) would remain locked up in the Foreign Relations Committee until action on his bill was completed. As Helms later described it in a hearing on the initiative:

I discussed this matter with the distinguished Ranking Member, Senator Biden, who readily agreed that it was essential that this be a bipartisan project. Thereby, we together sent the administration a clear message that there must be no repeat of the unsuccessful battles waged in 1995 and 1996 and to the credit of both the President and the Secretary of State, the administration came forward with a reform plan addressing many, though not all of my key concerns, and in the ensuing months Senator Biden and I, along with our respective staffs, devoted dozens of hours to hammering out the final package.


In April 1997, the Senate ratified the CWC and the Clinton administration released a plan supporting the restructuring of the agencies. However,
due to the linkage between the restructuring bill, the UN payments, and the family planning issue (driven chiefly by the House of Representatives), the Foreign Affairs Reform and Restructuring Act was placed on the back-burner until the fall of 1998. In October of that year, the final version of the legislation was finally signed by President Clinton. The bill eliminated the ACDA and the USIA, merging their operations into the State Department. USAID survived but was placed under the direct control of the secretary of state. Helms had achieved some but not all of his restructuring.

How do Jesse Helms’s efforts illustrate the avenues open to members of Congress to try to influence foreign policy, and what are the consequences of such efforts?


The general structure of international agreements has tended to provide advantages to the president. Since World War II, a large number of overseas commitments have been made by the United States—approximately 1,800 such agreements from 1789 to 2000—the vast majority of which came after 1945. Although almost 2,000 such agreements were in the form of formal treaties, subject to the advice and consent of the Senate, most of these commitments were executive agreements—not requiring senatorial advice and consent. In fact, by the end of the century, more than 90 percent of the international agreements of the United States were in the form of executive agreements (O’Brien 2003). About the time of the Vietnam War, members of Congress became concerned with the proliferation of executive agreements.

In response, Congress has tried four techniques in attempting to restore its advice and consent role in the agreement-making process. First, Congress passed the 1969 National Commitments Act and the 1972 Case Act and required the president to report all agreements within sixty days of their completion to ensure that Congress was aware of the commitment and had a chance to review or even reject it. Second, members of Congress have also tried—mostly unsuccessfully—to force the president to submit executive agreements to the Senate as treaties. Third, Congress has used the power of the purse in some cases, withholding funds necessary to implement executive agreements. Finally, Congress has tried to subject executive agreements to disapproval or approval, with limited success and the likelihood that such requirements may be unconstitutional.

When international agreements are negotiated as treaties, the Senate’s role and influence has been much more significant. The Senate may amend a treaty, which requires it to be renegotiated, or it may attach “reservations,” “understandings,” and “policy declarations” to guide future US practices, both on the treaty and, in increasingly more cases, on other issues. Since the Vietnam War and the end of the Cold War, members of the Senate have been increasingly likely to use treaty processes to shape policy in these ways (Auerswald and Maltzman 2003). For example, to gain passage of the Panama Canal treaties in 1978, President Carter was forced to accept two controversial reservations that emphasized American security concerns to protect the canal. Moreover, Senate opposition can be exercised simply by keeping treaties from coming to the floor for a final vote, which has been
done repeatedly with international human rights covenants. As well, individual members in key positions can hold treaties hostage, just as they do appointments. Presidents are aware of these possibilities and usually attempt to incorporate congressional preferences during the negotiations to such actions. As Martin (2000) argues, the Senate thus influences treaties in ways other than with up-or-down votes.

Three recent examples provide good illustrations. The Clinton administration gained ratification of the 1997 Chemical Weapons Convention but only after a difficult and highly charged political fight within the Senate. First, the treaty was bottled up in the Senate Foreign Relations Committee by Chairman Jesse Helms (see “A Closer Look”). Then, the White House had to reach out to Republican Majority Leader Trent Lott of Missouri. In exchange for his support, Lott demanded changes in the Conventional Forces in Europe and Anti-Ballistic Missile treaties, while Helms continued to hold the treaty in the Foreign Relations Committee. To get the treaty to a vote, the Clinton administration granted virtually everything that Lott and Helms had demanded.

Just two years later, the administration had its Comprehensive Test Ban Treaty rejected outright, with Republicans uniting in opposition to the treaty. As Helms refused to release the treaty from committee, fellow Republican senators Jon Kyl of Arizona and Paul Coverdell of Georgia worked to build opposition to the treaty. By October, confident that he had the votes to defeat the treaty, Lott decided it was time to give supporters a vote. Seeing that they lacked the necessary votes, Democrats, including Clinton, pleaded for a delay but were ignored. On October 13, the treaty was defeated 51–48 (DeLaet, Rowling, and Scott 2007).

More recently, Obama had to work hard to secure Senate approval of his New START nuclear arms control treaty with Russia. Negotiated over the first sixteen months of his presidency as part of the effort to “reset” US-Russian relations, the treaty, which proposed to slash the two sides’ nuclear arsenals by about 30 percent, stalled in the Senate after its completion. Opposition from Republican members blocked ratification until just before Christmas, when the administration and its supporters gained just enough Republican support to ensure ratification by agreeing to two amendments to the ratifying document (not the treaty itself) that stated the administration’s support of a limited missile-defense program and continued funding of nuclear weapons modernization programs (Sheridan and Branigin 2010).

The difficulty in securing Senate approval of treaties, complicated by the increasingly polarized and partisan environment, led Obama to resort to executive agreements to complete major multilateral diplomatic initiatives: the 2015 Joint Comprehensive Plan of Action to control Iran’s pursuit of nuclear weapons (concluded between Iran, the five permanent members of the UN Security Council, and the European Union) and the 2015 Paris Agreement on climate change (which currently has 196 signatories, representing all countries of the world except the United States). President Obama was able to conclude these agreements without Senate ratification because they were executive agreements, but President Trump was therefore able to reverse these US commitments without congressional approval, which he did in 2018.

The recent context also demonstrates other actions that members of Congress can take to try to shape policy where agreements and treaties are concerned. Of course, members can try to frame the public debate and thus bring political pressure to bear on the White
For example, in 2015 Senator Tom Cotton (R-AR) and forty-six Republican senators prepared and sent a controversial open letter to Iran seeking to undermine the Obama administration’s nuclear talks with Iran. In it, Cotton warned Iranian leaders that Congress and future Republican administrations would likely alter or even revoke the deal—which is, of course, exactly what the Trump administration did. Similarly, Republican leaders in Congress invited Israeli president Benjamin Netanyahu to deliver an address to a joint session of Congress in 2015 to argue against the US-Iran nuclear talks and urge the imposition of new sanctions against Iran instead. Finally, after more than two years in which the Trump administration took a variety of actions to undermine the US commitment to the NATO alliance, Congress took action to shore up support for the alliance and reassure American allies. In March 2019, Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Nancy Pelosi (D-CA) invited NATO General Secretary Jens Stoltenberg to address Congress, which he did on April 3, 2019, calling for increased alliance unity and efforts to counter increasingly aggressive Russian efforts to undermine it. Later in 2019, the Senate Armed Services Committee took further steps to signal strong bipartisan support for NATO and make it difficult for President Trump to withdraw from the alliance agreement, adopting an amendment to the defense spending bill (Gould 2019).

The Senate has also been active in the area of foreign economics and trade policy, often through its treaty powers, as these areas are more controversial and often have direct economic implications for constituents (Destler 1994; Nollen and Quinn 1994). Since the creation of the original Bretton Woods system during World War II, Congress has mostly delegated authority on regular rounds of negotiations to open trade, including the agreements to create the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) in 1994. In both cases, the Senate agreed to provide the executive branch and the president with what is referred to as fast-track authority to negotiate such international economic agreements, promising an up-or-down vote on the agreements. President Clinton obtained ratification for both NAFTA and the WTO, but with free trade becoming increasingly controversial in the globalizing economy, he was unsuccessful in getting congressional support for additional fast-track authority for future international economic and trade agreements.

George W. Bush finally succeeded in 2002—after the 9/11 attacks—in getting compromise legislation giving him fast-track authority, which he used to negotiate the Central American Free Trade Agreement, signed and ratified in August 2005. In October 2011, Barack Obama gained congressional approval of long-delayed free trade agreements with South Korea, Colombia, and Panama. He also gained congressional authority to negotiate the Trans-Pacific Partnership (TPP), a trade agreement with partners in the Pacific Rim to improve those countries’ ability to counter China’s growing economic might. However, the TPP proved controversial and President Trump withdrew the United States from the agreement almost immediately after taking office in January 2017.

**The Power of the Purse and the Power to Make Laws**

Congress is also a force to be reckoned with in foreign policy because of its control of the purse and its ability to make laws. This has always been the greatest strength of the
legislative branch, guaranteeing it a role in the policymaking process for most foreign policy issues, especially in economics and other intermestic issues. The main vehicles by which members of Congress access their legislative and spending powers are the legislative process and annual budget cycle. These complex procedures “hard-wire” Congress into policymaking, providing regular opportunities for members to initiate action on their preferences. Ultimately, since presidents cannot do what is not funded, they must eventually come to Congress.

No simplified summaries of the legislative and budget processes do justice to the complexity they exhibit. Legislation must wind its way from introduction through (often multiple) committees and subcommittees for hearings and markup, the floors of both chambers, and conference committees to reconcile the differences between the House and Senate versions. Ample access points exist for members to engage in the legislative process, but that also means there are many chokepoints where legislation can fail or be amended by another member with a different idea. The legislative process is also divided between an authorization process, based in substantive committees that “authorize government programs” and their general amounts; and an appropriation process, based in the appropriations committees that actually provide “money” for programs. For example, the foreign relations committees play the central role in authorizing the annual foreign aid and foreign operations bills, which fund the foreign affairs agencies and international assistance programs, but the appropriations committees engage in a second process to allocate funds to be spent. Both bills must make it through both processes. The legislative process is thus not only incredibly complex but also very political. Ultimately, bargaining and compromise are the keys to legislative success (Oleszek 2003; Sinclair 2000).

A good illustration of the opportunities provided by the legislative and budget processes is foreign assistance. Congressional involvement in foreign assistance policy has often been used by members of Congress to influence US foreign policy. Members can (1) “earmark” foreign aid funds for specific countries or purposes (e.g., specifying a certain amount of aid to Pakistan, or to combat the global HIV/AIDS crisis); (2) attach conditions that govern the allocation of funds (e.g., progress on human rights); or (3) attach reporting or certification requirements, forcing the executive branch to provide information to Congress. Congress has also leveraged its role in foreign assistance—as well as the broader power of the purse—to make occasional inroads on presidential dominance of the war-making power. For example, Congress cut off all US military assistance to South Vietnam and Cambodia in February 1975, thereby accelerating the end of the war in April of that year.

At times, Congress has taken the initiative through its power of the purse in setting the public agenda and steering foreign policy. For example, US government human rights policy is commonly attributed to the initiative taken by President Carter, who was a major advocate of international human rights. However, US support for human rights actually was initiated within Congress following Watergate and was manifested primarily through US foreign assistance policy. Foreign assistance legislation was amended to prohibit security and developmental assistance to any country engaging in a consistent pattern of gross violations of internationally recognized human rights. Likewise, Congress’s threatened passage of the 1985 anti-apartheid bill over President Reagan’s veto forced him to issue an executive order imposing sanctions on South Africa. In 1986, unsatisfied
with the administration’s half-measures, Congress enacted the Comprehensive Anti-Apartheid Act over the president’s veto.

The terrorist attacks of 9/11 initially increased congressional and bipartisan support for the president’s foreign policy in general and antiterrorist policies in particular. Among other things, Congress was quick to pass legislation to authorize the war on terrorism, as discussed earlier, as well as to appropriate funds; to provide additional foreign assistance to countries supporting the antiterrorism war; and to pass an antiterrorism bill—called the USA Patriot Act—that expanded the government’s ability to engage in domestic intelligence surveillance, detain suspects, and penetrate the banking and financial systems. Congress also dramatically increased spending on homeland security, defense, and intelligence.

During the Trump administration, Congress asserted itself on foreign aid as well, using its power of the purse to reverse or reject White House policy proposals. Although President Trump proposed to slash foreign aid spending by about 30 percent in each of his first three budget proposals, the Republican-led Congress refused to go along. Instead, under the leadership of key individuals, Congress restored, and even increased, foreign aid in the first two budget cycles and was poised to do the same in 2019.

The same patterns that have evolved with congressional involvement in foreign assistance also operate in other areas of foreign policy, such as national defense, energy, immigration, the environmental, and especially economics. First, members of Congress have taken a renewed interest in foreign policy issues since the Vietnam War. Second, while the president usually initiates policy and proposes legislation, the Congress shapes it. Sometimes major presidential initiatives are rejected outright; more often they are modified or fine-tuned by Congress. Third, Congress can take the initiative or replace a presidential initiative with one of its own. Fourth, Congress has become increasingly involved in the details of the defense budget. Fifth, the more an issue is divorced from national security affairs or the use of force—such as economics—the greater the congressional attention, involvement, and influence (Manning 1977).

The Power of Oversight and Investigation

Congress also has the power to oversee and investigate public policy matters. As former House member Lee Hamilton, a Republican from Indiana and his coauthor noted, “Congress must do more than write the laws; it must make sure that the administration is carrying out those laws the way Congress intended” (Hamilton and Tama 2003:56). Linked directly to the legislative process, congressional oversight to ensure that the president and the executive branch implement policies in accordance with the letter and intent of legislation can powerfully restrain presidential power and the foreign policy bureaucracy. This right represents, in fact, the ultimate means by which Congress may exercise its constitutional role. Ultimately, if sufficient abuse of power is determined by Congress, the president may be “removed from office on impeachment for, and on conviction of, treason, bribery, or other high crimes and misdemeanors.”

Since World War II, how has Congress employed its oversight powers? With respect to legislative oversight in foreign policy, we can identify three main approaches by which Congress oversees the executive branch: (1) regular oversight tied to the authorization and
appropriation cycles, (2) event-driven oversight triggered by policy agendas and issues, and (3) crisis-driven oversight prompted by major policy failures and/or scandals. Together, these approaches may result in a proactive, continuous supervision of the executive branch versus a more reactive, crisis-driven approach (Aberbach 1990; Deering 2003). Over time, members have relied on a mix of each kind, although there has been variation.

With each year’s budget cycle, the foreign affairs committees and subcommittees in Congress engage in “regular oversight,” holding hearings on agency programs and activities, considering agency budget requests, and collecting information from the executive branch and others. Greatly assisted by personal and committee staff, this oversight provides numerous opportunities for “watchdog” activities. It also leads members to support, revise, or oppose policy activities across a wide range of organizations. (See “A Closer Look: Pushing the President” for some additional insights.) More episodically, a particular member of Congress in a key position might organize an oversight hearing on an issue of particular interest, or one driven by current developments. In these instances of oversight, Congress gathers information on policy problems and administration responses or policies (or the lack thereof), which may lead to further action. For example, Pennsylvania Senator Arlen Specter, while still a Republican, promised to hold hearings on the controversial issue of domestic spying in 2006 as chair of the Senate Judiciary Committee. Such “event-driven oversight” is especially important to congressional foreign policy agendas.

A Closer Look

PUSHING THE PRESIDENT

The high-stakes territorial disputes in the South China Sea and China’s increasingly assertive claims pose challenges for its neighbors in the region and for the United States. Since 2014, the Obama administration, followed by the Trump administration, has had to take actions to address US concerns in the region. However, these efforts to respond to the South China Sea challenge are shaped by more than the executive branch. Making sense of US diplomacy and its policy approach to this potentially volatile territorial issue requires attention not only to the presidency but also to members of Congress. The most recent context provides an instructive example of the steps and sequences of congressional activities to shape foreign policy.

After the 2016 elections and the change in administration, members of Congress initially waited to see what the new administration’s approach would be. They were encouraged by Secretary of State nominee Rex Tillerson’s firm and assertive statements at his confirmation hearings, during which he called for confrontation. However, assertiveness receded as the new administration sought cooperation with China to address North Korea’s nuclear weapons program.

As a consequence, members of Congress took action to prod the reluctant administration forward, combining signals, hearings, and the introduction of legislation to press their preferences for a different, more assertive approach. For example, seven senators wrote to the White House urging more aggressive action, including the resumption of naval patrols in the South China Sea. According to one congressional aide, “We thought it was important to weigh in and also to try to help shake things loose in the administration on this” (DeLuce 2017). Bob Corker (R-TN), chair

(Continued)
When policy failures and/or scandals hit, Congress typically responds retrospectively by organizing hearings to investigate the causes of the failures. Such “crisis-driven oversight” occasionally leads to future legislative efforts to correct the problems identified. The most well-known examples of crisis-driven oversight include the internal security investigations of the late 1940s and early 1950s, when a number of congressional committees were active in investigating communist influence in government, academia and education, the media, Hollywood, and other walks of American life. Following this, during the height of the Cold War Consensus, oversight lapsed. The general attitude toward oversight of the national security bureaucracy at the time was expressed by Senator Leverett Saltonstall, the ranking Republican on the Armed Services Committee: “It is not a question of reluctance on the part of the CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a member of Congress and as a citizen, would rather not have” (quoted in Treverton 1990:74).

With the Vietnam War, crisis-driven investigative oversight increased. A major entry was the Watergate hearings—the congressional investigation of Nixon’s presidential conduct, which eventually produced three impeachment counts by the House Judiciary Committee and forced Nixon’s resignation. Additional investigations included two detailed House and Senate investigations of the intelligence community by the Pike and Church Committees in 1975, which stimulated the creation of intelligence oversight committees within each chamber and triggered efforts at intelligence reform (Johnson 2005; Smist 1994). A decade later, the Reagan administration’s efforts to covertly exchange arms for hostages with Iran and to fight a secret war to overthrow the Sandinista government in Nicaragua produced the Iran-Contra affair, which led to major investigations—the Tower Commission, consisting of John Tower, Brent Scowcroft, and Edmund Muskie; then initial

of the Senate Foreign Relations Committee, joined with Senators Marco Rubio (R-FL), Cory Gardner (R-CO), Benjamin Cardin (D-MD), Jack Reed (D-RI), Edward Markey (D-MA), and Brian Schatz (D-HI) on the letter. In addition, Rubio introduced the South China Sea and East China Sea Sanctions Act of 2017 in March, legislation that would escalate US responses to include entry and property sanctions (currently pending in committee at this writing). In response, the administration ended its freeze of naval operations in the region (it had denied several requests from the Defense Department for such operations) and, in May 2017, authorized the first such action of its tenure in office. Administration officials including Secretary of State Tillerson and Secretary of Defense James Mattis also delivered more assertive warnings to China in public statements made during travel in the region in June 2017, and the administration increasingly embraced an approach similar to that of its predecessor, with somewhat more emphasis on shows of force.

What does this example suggest about congressional foreign policy activity and influence?

closed-door congressional investigations by the intelligence committees; and then a joint House and Senate congressional investigation that led to the Iran-Contra hearings and subsequent report by the joint congressional committee.

After the Cold War, Congress investigated the US relationship with Iraq during George H. W. Bush’s administration. Later, President Clinton experienced a number of congressional investigations during his time in office, including those of Whitewater, Clinton and Gore’s 1996 presidential campaign and fund-raising efforts, and the Monica Lewinsky affair. The last of these resulted in Clinton’s impeachment and subsequent trial in the Senate, in which the articles of impeachment were voted down. Like investigations of the past, the Clinton investigations were heavily partisan as a result of divided government—led by Republican members of Congress after the 1994 elections to damage a sitting Democrat in the White House.

Most recently, in the aftermath of the 9/11 attacks, the House and Senate intelligence committees held a joint investigation of the intelligence community’s mistakes leading to the attacks, releasing a scathing report in December 2002 (US Congress 2002). After it became clear that prewar claims of Iraq’s possession of weapons of mass destruction were almost completely wrong, the Senate intelligence committee held another investigation, releasing its highly critical assessment in July 2004 (US Senate, Select Committee on Intelligence 2004). Further revelations of controversial activities by the intelligence community as part of the war on terror, including torture and an alleged secret assassination program, led to additional investigations in 2009 (Isenstadt 2009). The Obama administration faced congressional scrutiny in the wake of the 2012 Benghazi episode in which Libyan terrorists attacked US facilities, with six congressional committees conducting ten investigations over the next four years. And, following the 2018 midterm elections that put Democrats in the majority in the House of Representatives, the House began numerous oversight hearings investigating various aspects of the Trump administration’s activities and processes, including those related to the 2016 election, Russian interference, security procedures for personnel, and others. Following whistleblower revelations of illegal efforts by the Trump administration to enlist foreign interference in the 2020 election, the House turned to its most powerful oversight tool, beginning impeachment proceedings against President Trump in the fall of 2019.

Two additional characteristics of oversight bear noting at this point: (1) reporting requirements and (2) the increasingly common use of special commissions to conduct investigations. Reporting requirements are a congressional mechanism that fuels oversight. As we noted earlier, such requirements extract information from the executive branch through regular reports and notifications as well as through special reports. Congress and the president increasingly collaborate to delegate oversight and investigative responsibilities to special, so-called blue-ribbon commissions, generally drawn from key experts and former policymakers from both political parties (Campbell 2001). Examples include the Rockefeller Commission, appointed by President Ford to investigate the intelligence community in the mid-1970s; the previously mentioned Tower Commission; the Aspin-Brown Commission, appointed in 1995 to investigate the intelligence community; the Hart-Rudman Commission, appointed in 1999 to study US national security; and the Kean and Silberman-Robb commissions, appointed after 9/11 to investigate the attacks and the intelligence on weapons of mass destruction in Iraq, respectively.
To what extent is Congress a force to be reckoned with in the making of contemporary US foreign policy? No simple answer or single relationship prevails today between the legislative and executive branches in the making of US foreign policy. Clearly, as we discussed earlier in the chapter, interbranch politics in foreign policy have been fluid and dynamic, with neither Congress nor the president always predominant, especially since the collapse of the Cold War Consensus.

How might the complex politics of legislative-executive relations evolve in the future? Three principal elements support the continuation of an active, though sporadic, congressional role in the foreign policymaking process. First, Congress has experienced institutional changes that were instrumental in allowing its reassertion of influence in foreign policy. These changes are not temporary but have been institutionalized in a more bureaucratic environment. Furthermore, major membership turnover—which has the potential to alter Congress as an institution—is difficult to achieve in a short period of time, given the high reelection rates of incumbents and the large number of “safe seats.” Moreover, the differences in the strength of each major party in each chamber is so small that the switch of only a few seats from one party to another following an election can produce different party control in the House and/or the Senate, creating considerable uncertainty for the future of divided government, presidential power, and majority coalitions. In this sense, the outcome of future congressional elections is both uncertain and likely to be potentially quite significant.

Second, changes in the domestic environment since the Cold War have prompted and reinforced congressional activism in foreign affairs. The Cold War Consensus that fueled bipartisanship and the imperial presidency has been replaced by competing policy perspectives and greater diversity in domestic politics, which constrains presidential power while strengthening Congress’s role in foreign policy. The 9/11 attacks and the war on terrorism do not seem to have produced a new foreign policy consensus to replace the anti-communist consensus of the Cold War years, nor did the Great Recession reinforce the simple free market and free trade orientation for promoting economic recovery and growth.

Finally, changes in the international environment have affected the foreign policy agenda in ways that should ensure congressional involvement. The international system has become more complex since the 1950s, when most Americans saw the world divided between two superpowers and their opposing forces. A more complex international environment has provided the setting for America’s failure in Vietnam and the shattering of the Cold War Consensus in domestic politics. This has been reinforced by the demise of the Soviet empire and the changes taking place in Eastern Europe. What were once considered “low” policy issues, such as international economics, have been elevated to the top of the contemporary foreign policy agenda—intermestic issues that members of Congress traditionally influence—even with the growing importance of terrorism as an issue.

Although institutional changes in Congress, changes in the domestic environment, and changes in the international environment and foreign policy agenda combine to ensure a prominent role for Congress in the future conduct of US foreign policy, congressional
dominance is unlikely. At the same time, however, the days of presidential supremacy in most areas of foreign policy have passed. Unless a global calamity occurs that creates the perception of a chronic state of national emergency for the United States and ushers in a new period of legislative-executive relations, considerable congressional involvement and influence will continue for the foreseeable future regardless of who is president and what party is in power.

**THINK ABOUT THIS**

Senator John McCain, who passed away in 2018, once said of Congress and its foreign policy, “Whether we are of the same party, we are not the president’s subordinates. We are his equal!” Think about the discussion of Congress and foreign policy in this chapter.

**KEY TERMS**

- advice and consent 296
- anticipated reactions 277
- appointments 296
- appropriation process 301
- authorization process 301
- avenues of influence 276
- bipartisanship 279
- commissions 305
- committee staffs 284
- congressional foreign policy activity 277
- congressional oversight 302
- divided government 288
- executive agreements 298
- executive privilege 275
- fast-track authority 300
- implied consent 274
- invitation to struggle 273
- judicial review 273
- legislative process 301
- legislative veto 274
- McCarthyism 279
- partisanship 286
- personal staffs 284
- polarization 286
- political questions 274
- politics of threat 289
- power of the purse 301
- reporting requirements 305
- roll call votes 284
- separate institutions
- sharing power 273
- treaties 298
- voice votes 284
- War Powers Act 293
- watchdog 303
- zone of twilight 274

Visit [study.sagepub.com/scottrosati7e](study.sagepub.com/scottrosati7e) to help you accomplish your coursework goals in an easy-to-use learning environment.