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NATIONAL SECURITY COUNCIL

Memo for Mr. Buchen

- FyI

From Les Janka

RE: Executive/Legislative Relations

~~AMXX~~ Another problem we will have to confront soon will be the recommendations of the Murphey Commission on Foreign Policy.

As you can see from the attached draft of their work, they are planning some sweeping recommendation in the executive agreements and executive privilege areas.

We have asked State to analyze this and give us some counter arguments.

All this has been done discretely of course since we are not exactly entitled to their drafts.

A large, stylized handwritten signature, likely of Les Janka, written in black ink.

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT  
FOR THE CONDUCT OF FOREIGN POLICY

2025 M STREET, N.W.

WASHINGTON, D.C. 20506

April 15, 1975

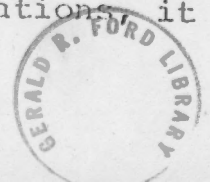
MEMORANDUM TO: Members of the Commission  
FROM: William B. Spong, Jr. *WBS*  
SUBJECT: Report of the Committee on the Congress

I enclose for the consideration of Commission members a copy of the draft report of Committee I, together with a special concurring opinion of Commissioner Wagner with respect to a single recommendation, and a letter from Senator Mansfield expressing broader reservations about the central recommendation of the draft, and concerning other matters.

Despite these reservations, it is the sense of Committee I that the draft should be presented to the full Commission for review at the Commission's meeting on Monday, April 21st. It is true that no final approval of recommendations concerning the Congress will be possible at that time since, as Senator Mansfield points out, the Commission will have to review its congressional proposals in the light of its corresponding recommendations about the Executive Branch. Nonetheless, it seems useful to ask the Commission now to review this work of Committee I in order to familiarize itself with potential recommendations about the Congress, to consider their relation to potential recommendations about the Executive Branch, and to provide staff with guidance for the redrafting of this and other Committee reports.

In reviewing the draft, Commission members may wish to keep a number of points in mind. Probably the most important is that, as Senator Mansfield's letter reflects, the Committee is not agreed about the central recommendation embodied in the text, that for a Joint Committee of the Congress on National Security. This important and controversial proposal should be reviewed with special care both for its potential implications for the Congress, and for its appropriateness in light of the recommendations the Commission is likely to make with respect to the Executive Branch.

Commissioners should also bear in mind that, although the current draft is generally a fair, accurate and complete statement of the conclusions reached in Committee I's deliberations, it

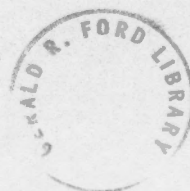


will have to be modified in several respects. There are a number of points where the rationale for recommendations will need to be amplified -- those concerning executive agreements and congressional staffs, for example. There is at least one point -- the discussion of war powers -- where recent events will require some revision in the text. There are one or two minor errors of fact; at page 21, for example, where it is erroneously stated that the Commission has previously approved disclosure of the overall intelligence budget. Additionally, one proposal made in the draft seems questionable and may go beyond the Committee's deliberations: it is the recommendation on page 11 that the Senate itself solicit names of potential nominees for ambassadorial appointment.

You will also find enclosed herewith a corollation sheet comparing some of the survey proposals in the Congressional Survey Report given to you at the March 31st meeting with some of the recommendations contained in the enclosed draft. You will be reviewing the Congressional Survey along with the enclosed draft and this comparison may be helpful to you.

Finally, the Commission may wish to consider some proposals not approved by Committee I and therefore not reflected in the draft, but possibly worthy of discussion. One such proposal concerns congressional representation on an enlarged National Security Council. That particular proposal, which Dean Wilcox believes deserves a hearing, will be offered by him for consideration at the April 21st meeting.

Enclosures:





DRAFT REPORT OF COMMITTEE I: Proposals on the Organization  
of the Congress and Congressional-Executive Relations

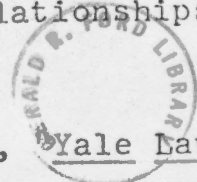
"The relations between the Executive and Legislative Branches of our Government were not designed to be restful. We must not be disturbed and think that things have gone amiss when power striking against power, and being restrained, produces sparks."\*

We have described in the opening pages of this report two beliefs about the future challenges to American foreign policy and the probable inadequacy of current organizational arrangements to meet those challenges. The first is that the major foreign policy problems of the future will increasingly arise from the tightening economic and physical interdependence of nations, but the structure of our Government for the making of foreign policy still reflects the preoccupation with military problems which dominated the post-war years in which that structure was designed. The second is that problems of interdependence will sharply affect the domestic economy of this country and therefore merge with domestic political issues, but the processes of our foreign policymaking are still designed as though foreign and domestic policy are distinct, and that politics can and should "stop at the water's edge."

These two beliefs place a special burden on the Commission to examine Congressional-Executive relationships

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\*Dean Acheson, "Legislative-Executive Relations, Yale Law Review, June 1956



and the internal organization of the Congress. The Commission believes that, even with respect to the traditional diplomatic and national security issues of foreign policy, the Congress until very recently has deferred excessively to Executive leadership, though a better balance is now in the process of being struck. But if we are correct as to the probable shape of future foreign policy problems -- if these are likely to be dominated not by such questions as the recognition or non-recognition of foreign regimes, the overseas basing of U.S. forces, or levels of supporting assistance to allied governments, but instead by problems of global resource access, labor migration, commodity pricing, the relations of currencies, protection of the global environment and the like -- then foreign policy will far more intimately affect domestic politics and the domestic economy. It will touch the American public more directly, and will necessarily involve the Congress more deeply. The Congress, then, must be prepared to play, effectively and responsibly, a broader role than before in those issues with both foreign and domestic dimensions.

The Commission notes with gratification that this conclusion seems to be at least broadly accepted by the Congress itself. The Commission conducted an extended survey of the views of Members of Congress on the making of U.S. foreign policy. (The survey is reproduced in full as Appendix

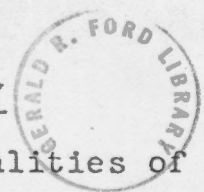


to this report.) A number of the views expressed in the survey will be referred to in this report; but the central theme of those views was a dissatisfaction with the current role of Congress in the making of foreign policy, and the desire that Congress play a larger foreign policy role.

We seek no radical shift in power between the two Branches. The Commission believes that in the future, as in the past, the Executive Branch must bear the lead responsibility for the management of our relations with other countries. But to assure a better sharing of responsibilities in that broad region where both branches must act, and to better equip the Congress to perform its own growing role in foreign affairs, we propose recommendations of three kinds. The first group of recommendations concerns the relation of the Executive to the Congress. The second proposes several means of strengthening Congressional performance. The third group seeks to improve the ability of Congress to take more fully into account the foreign implications of issues which might otherwise be decided principally in light of their domestic significance. The Commission has been gratified to find that the Congress has already make substantial progress in dealing with all three areas. Indeed many of our recommendations seek merely to strengthen or qualify steps already taken or proposed.

#### I. TOWARD A MORE EFFECTIVE SHARING OF AUTHORITY

Both the Constitution and the political realities of our





system require that major issues of foreign policy be resolved only on the basis of shared participation and responsibility between the Congress and the Executive. The Commission offers a number of proposals to facilitate that sharing.

War Powers. The Commission has reviewed the efforts already made to ensure joint action with respect to the nation's war powers, and it endorses the principles of the Resolution of 1973. We recognize that the Resolution by itself cannot ensure the appropriate relation between the branches, and that a practice of close consultation between the Executive and the Congress on matters involving the use of force must evolve before the Resolution can accomplish its purposes. That practice has not yet evolved, and the recent decision of the Department of State to treat the Cyprus evacuation of August 1974 as falling outside the scope of the Resolution is not a promising sign. The Commission recommends no alteration in the terms of the Resolution. The Commission does urge, however, that the Executive Branch comply ungrudgingly with the spirit as well as the letter of the Resolution, and that the Congress fully meet its own new responsibilities under the Resolution. In the later discussion of a new Joint Committee, we suggest one device for assisting the Congress to meet those responsibilities.

Executive Agreements. The Commission believes that the broad use of Executive Agreements with foreign governments derogates



the role of Congress and serves the nation poorly. We believe that the freedom of the Executive to enter into such arrangements must be balanced against the necessity for public understanding, review and -- through the Congress -- recourse as to their terms. Congressional views, as indicated in the Survey, are similar.

Accordingly, we propose that the Congress should by statute require that all Executive Agreements -- i.e.; all bilateral or multilateral international agreements other than treaties, be transmitted to the Congress within 30 days of their signing, to come into effect 60 days following transmittal, if neither House has disapproved by simple majority vote.

The statute should make clear that, notwithstanding such submission to the Congress, no Executive Agreement can constitute a commitment to assist a foreign government or people by the use either of armed forces or financial aid. Such a national commitment should result only from affirmative action in the form of a treaty, statute, or concurrent resolution specifically embodying such a commitment.

Emergency Powers. The scope of a third set of Executive powers, and the procedures appropriate to their use should also, we believe, be established by the Congress. These are the powers deriving from national emergencies. As the work of the Special Committee on the Termination of the National Emergency has

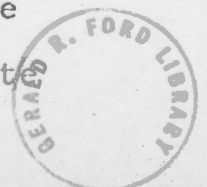




shown, four Senate proclamations of national emergency are currently in effect. Of these, two -- declared in 1950 by President Truman in response to the Korean conflict, and in 1971 by President Nixon to implement currency restrictions and enforce controls on foreign trade -- were generated by problems of foreign relations.

Pursuant to these proclamations, over 470 provisions of federal law have come into effect, delegating extraordinary authority to the Executive. The emergencies have now ended, but the formal states of emergency endure and the country remains in a state of emergency rule. The matter is no mere technicality; the prolonged continuation of such powers diminishes the constitutional role of Congress in foreign policy, and puts at unnecessary risk the Constitutional balance of government.

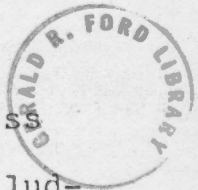
The Commission believes, therefore, that the states of national emergency should be repealed and that all statutes delegating authority in time of national emergency should be repealed or revised to conform to the provisions of the proposed National Emergencies Act. The Commission further recommends that, as that Act provides, any future declarations of national emergency should specify the statutory powers required to meet such an emergency; and that all national emergencies should be terminable at any time by concurrent resolution or by Presidential proclamation, and in the absence of extension by Congress, they should terminate automatically 6 months after their proclamation.



Two final recommendations in this section concern the availability to the Congress and the public of information relating to foreign policy. As Congressional responses to the survey questions indicate, Congress appears deeply concerned about the inadequacy of its information concerning foreign policy issues. A number of the recommendations made in this report seek to address that problem. Here we present two such recommendations: the first concerning Executive privilege; the second relating to the security classification system.

Executive Privilege. One of the bars to Congressional access to information relevant to U.S. foreign policy has been the claim of Executive privilege. The Commission recognizes that there exist circumstances in which Presidential confidentiality should be preserved, but it believes such circumstances should be specified and limited by statute. Congress has the power to establish by legislation the limits and scope of Executive privilege with respect to Congressional requests for information, subject to judicial review; the Commission believes that the public interest would be well served by such legislation.

The Commission therefore recommends that the Congress enact legislation providing that any Federal agency, including the President, shall make available information requested by either House of Congress or any committee having jurisdiction




of the matters involved, subject to claims of privilege concerning information of two types which may be asserted by the President personally:

(1) Advice concerning policy choices but not covering factual information underlying or included within such advice.

(2) Information as to which any Congressional need is substantially outweighed by the harm which disclosure would effect upon the vital interests of the United States.

The legislation should further provide that, if any such claim of privilege is determined by the House or Committee in question to lack justification, the House or Committee may file suit in Federal District Court to compel disclosure. In such a suit the Court should be empowered to hear and rule on the matter expeditiously and, if necessary, to utilize in camera proceedings.

A Classification System Based on Statute. One assertion on which virtually all observers of the conduct of U. S. foreign affairs agree is that far too much information has been classified, classified too highly, and classified too long. As a result of the wide consensus on this point, a number of corrective actions have recently been taken, most notably the Freedom of Information Act Amendments of 1974. These reforms, however, have not touched what we regard as the root of the problem; namely, that the current classification system operates without any statutory basis. We believe that procedures so



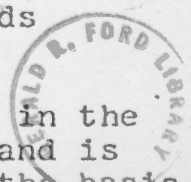


important and potentially so dangerous as those which restrict the ability of a free people to review the operations of its own Executive departments must be defined and circumscribed by law. We believe, moreover, that the provisions of such a law should balance the Executive's needs for secrecy and the nation's requirements for knowledge more equally. Accordingly, we propose that the Congress enact legislation establishing a comprehensive system for classification based on the following principles:\*

- The mandatory classification, in one of several degrees of classification, of specified types of information relating principally to the national defense.
- The mandatory exemption from classification of specified other types of information, relating principally to U.S. actions in violation of internal law.
- The discretion, to be exercised only by officials of Assistant Secretary or equivalent rank and above, to classify or exempt from classification all other information, on the basis of specified criteria which balance the need for secrecy against the potential value of disclosure.
- A comprehensive system of automatic downgrading and declassification, specifying the periods

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\*Several of these principles go beyond those discussed in the Committee. Staff believes they deserve presentation and is prepared to brief Committee or Commission Members on the basis for them.



after which information must be downgraded and declassified.


- The application of specified sanctions to persons violating the terms of the system, including administrative sanctions applicable to over-classification.
- The availability of legal process to challenge classification decisions.

Oversight of this system, once established, should become the responsibility of the Joint Committee on National Security which is proposed elsewhere in this report.

## II. STRENGTHENING CONGRESSIONAL PERFORMANCE

Striking a better balance between Executive and Congressional roles in our foreign relations is not enough. Indeed, by requiring more of the Congress, such a balance simply increases the need to ensure that the Congress is organized and equipped to play its part effectively. The recommendations presented here address those needs.

Congress and the Appointment Process. In recent years the Senate Foreign Relations Committee has made several changes in the process of confirmation of Ambassadors and other foreign policy officials designed both to improve the competence and suitability of nominees, and to ensure their greater responsiveness to later inquiries from the Congress. The

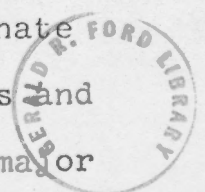




Commission endorses these measures. It believes that nominees should be closely questioned concerning possible conflicts of interest and political contributions, and that, as the Committee now requires, they should provide assurance of willingness to later appear, provide requested information, and express personal as well as administration views.

To further this process, the Commission proposes an additional measure. As to Ambassadorial appointments, we propose that the Foreign Relations Committee, prior to submission by the Executive of nominees, systematically seek the advice of qualified private citizens and public officials as to suitable candidates. We believe that such a process would more fully prepare the Senate to meet its responsibility to "advise" as well as "consent" to nominees, and might improve the caliber of nominees originally proposed by the Executive. In both the review of candidates and in the consideration of nominees, the Senate should continue to require of persons under consideration familiarity either with the country to which the nominee is to be accredited, or experience in the formulation or practice of U. S. foreign policy, or some other substantial and relevant qualification.

On a related issue, the Commission notes a practice which tends to erode the Constitution's requirements for Senate approval of "... Ambassadors, other public Ministers and Consuls." The number of foreign policy positions of major



responsibility has increased in recent years, but the occupants of some of these positions have not been subject to Senate confirmation. In 1973, the Senate required confirmation of future nominees for the positions of Executive Director of the Council on International Economic Policy and the National Security Council Executive Secretary, but not for the Executive Director of the NSC. The Commission believes that the requirement of confirmation should be applied systematically, and therefore recommends that the Senate require the confirmation of all Executive officials appointed to positions having foreign policy responsibilities equivalent or greater in importance than the responsibilities now discharged by Assistant Secretaries of State, except in cases where the personal rank of ambassador or minister is conferred in connection with special missions of less than 6 months duration.

Modifications of Committee Jurisdictions. Since economic relations seem certain to constitute a growing proportion of future foreign policy, the Commission has considered how to improve the ability of the Congress to consider economic questions in the light of their foreign implications. We conclude that some adjustment in Committee jurisdictions may be helpful.\*

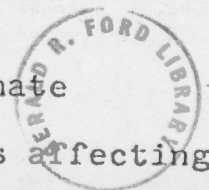
We propose that in the House, the Committee on International Relations be accorded legislative jurisdiction over reciprocal tariff agreements, and oversight over all other aspects of trade policy issues. Moreover, we believe it important that,

\*The Congressional Survey revealed widespread dissatisfaction with Committee jurisdictions in general, but did not seek responses to the proposal made here.

with increasing reliance on foreign trade instead of aid, and with more use of international financial organizations to dispense foreign aid funds, the House Committee on International Relations should exercise concurrent legislative oversight over international financial organizations, together with the House Committee on Banking and Currency. We believe that these changes will substantially improve the ability of the House to act on the spectrum of foreign economic issues in full awareness of their implications for our relations with other countries as well as their domestic significance.

In the Senate, Committee jurisdictions seem more nearly satisfactory. The Senate Foreign Relations Committee has considerably broader jurisdiction than the Committee on International Relations, including trade and international financial institutions. The Senate, furthermore, has far greater jurisdictional flexibility under its rules which allow for referral of legislation to two or more committees. However, Senate committee jurisdiction and workloads have not been systematically reviewed for nearly 30 years (the last review culminated in the Legislative Reorganization Act of 1946). And despite the workloads that spread the Senators thin, the number of subcommittees has increased since then from 34 to more than 120 -- many with overlapping foreign policy responsibilities.

While precise congruence between House and Senate jurisdiction is not essential, recent House changes affecting





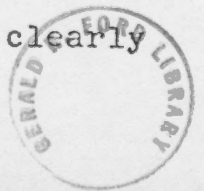
foreign policy matters may require some adjustments in the Senate. From the point of view of improving Congress' ability to consider foreign policy matters efficiently and effectively, therefore, a review by the Senate of its own committee system now seems appropriate. The Commission recommends such a review.

Responsibility for Multinational Corporations. The Commission finds that the increasing number and influence of multinational corporations have potentially serious implications for the conduct of American foreign as well as domestic policy. It recommends, therefore, that the activities of such corporations and their effects on the making of American foreign policy should be a major and continuing focus of Congressional attention. But, because multinational corporations affect domestic as well as foreign policy, current Senate and House procedures permitting consideration of these issues by several committees, each with a specialized perspective, seem correct. Vesting exclusive jurisdiction in the Foreign and International Relations Committees over multinational corporations would not be appropriate, but those Committees [sharing jurisdiction over multinational corporations] should take an active role in initiating and considering legislation concerning those aspects of multinational corporate activities which particularly affect the conduct of American Foreign policy.



The Use of Subcommittees. The Commission is gratified to observe the increased use of foreign policy subcommittees in the Congress. Subcommittees offer distinct advantages over full Committees as working units. They can respond more quickly to changing foreign policy developments. Their procedures can be relatively informal, facilitating discourse among Members and between Members and witnesses. They present greater opportunities for Members to develop expertise and to establish direct relationships with Executive branch officials. Finally, they facilitate the holding of joint hearings, both within and among committees. Even in the Senate, where competing demands make it difficult for Members to participate fully in all the subcommittees to which they are assigned, hearings and preliminary legislative action by even two or three interested Senators in subcommittee is preferable to less frequent and detailed deliberations at full committee level. In short, despite practical limitations, particularly in the Senate, active subcommittees can increase both the scope and depth of Congressional consideration of foreign policy matters.

The Commission therefore recommends fuller utilization of subcommittees to strengthen the basis of committee action, and to provide greater interchange with working-level Executive officials. It also recommends increased use of joint hearings by subcommittees to meet part of the need, expressed clearly





in Congressional responses to the Survey, for better coordination of the actions of the Congress.

In view of the growing links between nations, and the growing importance of problems -- like resource access, arms sales, oceans policy, food and population -- which affect many states, the Commission believes that these subcommittees may be most useful if organized on a functional rather than a regional basis. The Commission therefore commends the experimental use of such functional subcommittees by the Committee on International Relations.

A New Joint Committee. However useful the recommendations above concerning committee jurisdictions may prove, and however powerfully they may be reinforced by the proposals made below concerning committee staffs and analytic support, those recommendations leave untouched at least two major problems. One is that since political, military and economic aspects of foreign policy have become interlocked -- and since many foreign and domestic policy issues threaten to become so -- the Congress should contain some forum in which those interrelations can be directly weighed, particularly in time of crisis when specialized standing committees, pressed for action, might benefit from help in appreciating how particular aspects of policy decisions relate to those being considered by other committees.

The second is that the Congress is -- properly -- requiring increasing consultation with senior foreign policy officials of the Executive Branch at the same time that an



increasing number of specialized committees are necessarily concerning themselves with the foreign aspects of their responsibilities. The result is the potential for an unsustainable demand on senior executive officials for multiple appearances before Congress -- a problem particularly severe when fast-moving events require the full and direct attention of the same officials.

Neither efficiency nor effective policy coordination have been Congress' particular strengths -- nor should they be. The greater contribution of the legislative process is its unique ability to explore policy alternatives and to weigh and resolve widely disparate points of view. Its strength as deliberator, however, does not relieve Congress of responsibility for reasonable efficiency and coordinating capacity. Indeed, if Congress is to play the greater foreign policy role which this Commission endorses, those capacities will increasingly be demanded of it. And as the staff survey of Congressional views indicates, most Members, while regarding policy coordination primarily as the responsibility of the Executive, also favor changes to improve Congress' own efficiency in coordination.

With these problems in mind, the Commission considered a number of proposals. It concluded that a single innovation may be materially helpful.

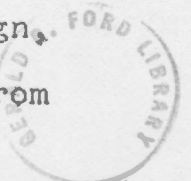
In the Commission's view, a Joint Committee on National Security should be established to perform for the Congress



the kinds of policy review and coordination now performed in the Executive Branch by the National Security Council, and to serve as a Congressional watchdog of the National Security Council and the critical issues it deals with. The Committee should serve as the initial recipient and reviewer of reports and information from the Executive Branch on matters of greatest urgency and sensitivity directly affecting the security of the nation. It should advise the party leaders and relevant standing committees of both Houses of Congress on appropriate legislative action in matters affecting the national security, and should assist in making available to them the full range of information and analysis needed to enable them to legislate in a prompt and comprehensive manner.

The existence and activities of such a Joint Committee should in no way substitute either for direct consultation between the President and Congressional party leaders, or for the regular legislative and investigative functions of the present standing committees in each House. Rather, it should supplement these -- providing a more systematic and comprehensive exchange of information, analysis and opinion than has proved possible under the existing committee and leadership system.

For both operational and security reasons, the Joint Committee should be small -- containing not more than 20 Members. It should include the leaders of the key foreign, military, and international economic policy committees from



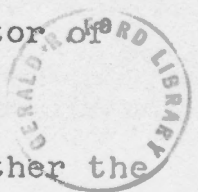


each House, and several Members-at-Large appointed by the party leaders to represent them and to enhance the Committee's representativeness of the Congress as a whole.

The Commission recommends that the Joint Committee be vested with the following specific jurisdictions and authorities:

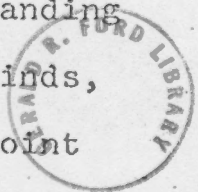
1. Receipt, analysis and referral (along with any recommendations it may consider appropriate) of reports from the President under the War Powers Act.
2. Receipt and review of all regular analytic products of the intelligence community excepting the so-called "President's Daily Briefing."
3. Oversight (in conjunction with the Executive Branch) of the system of information classification discussed above.
4. Establishment and maintenance of facilities and procedures for storage and handling of classified materials supplied to the Congress.
5. Making recommendations to the Senate concerning the confirmation of the Executive Director of the National Security Council.

The Commission gave careful consideration to whether the responsibilities of the Joint Committee should include broad oversight of the Central Intelligence Agency and the larger



intelligence community. Recent creation in both House and Senate of Select Committees to investigate certain activities of the intelligence community would seem, for the moment at least, to preclude assigning any other Congressional body intelligence oversight responsibility. The terms of these Select Committees, however, are limited. The Commission feels that more systematic arrangements for oversight of the intelligence community are needed on a permanent basis, and that such oversight must be conducted by a body capable of assessing intelligence products and activities in the context of our total foreign military and economic priorities. The Joint Committee seems logical and appropriate for that task. But the Commission believes that any final decision to assign permanent intelligence oversight should await the outcome of the deliberations of the two Select Committees.

The experience of the Joint Committee on Atomic Energy illustrates the usefulness of legislative authority in helping assure a Committee's effectiveness. This Commission does not recommend that the proposed Joint Committee be vested with broad authority to report proposed legislation to the House and Senate. In general, any legislative recommendations of the Joint Committee should be reported to relevant standing committees for their consideration. The Commission finds, however, two narrow and specific areas in which the Joint Committee might usefully have authority to report legislation directly to the floor of each House just as the Joint Committee on Atomic Energy is empowered to do. Those are:

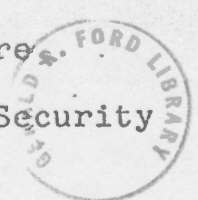




(1) creation of a statutory system of information classification, and (2) annual authorization of funds for the intelligence community.

The Commission has recommended above that the current system of information classification with respect to foreign affairs and national security be transformed from one based upon executive order to one based upon statute, thereby clarifying and limiting the system, and making it more responsive to Congressional requirements. Creation, review and implementation (in cooperation with the Executive Branch) of such a statute would blend logically with the other responsibilities and jurisdictions of the proposed Joint Committee.

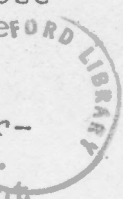
Similarly, the Commission has recommended elsewhere that the total amount of funds devoted annually to intelligence activities should no longer be withheld from the public. Total expenditures for intelligence should be known so as to make possible the assessment of their priority relative to other foreign and domestic requirements. Such a review of total expenditures for intelligence in relation to other needs might best be achieved by subjecting intelligence expenditures to an annual authorizing process. No such broad intelligence authorizing legislation is currently considered by any Committee of the Congress. The Commission, therefore, recommends that if the Joint Committee on National Security



is assigned the role of intelligence oversight, that it then also be assigned responsibility annually to recommend legislation to each House authorizing total funding for the intelligence community.

The Commission well understands that neither establishing such a Joint Committee nor making it function effectively will be easy. While the staff survey indicates majority support among Members for greater joint efforts in Congress, it also reveals many doubts and practical problems. The Commission has carefully considered these difficulties. It concludes, nevertheless, that the likely impact of the Joint Committee upon Congress' capacity to play a more meaningful foreign policy role fully justifies the efforts and concessions necessary to create it and to make it work.

Use of the Budget Process. [NOTE: The Committee approved recommendations concerning implementation of the Congressional Budget and Impoundment Control Act of 1974, and the desirability of unifying all budget categories relating to foreign affairs. To insure that these recommendations are cast in the most useful form, and to insure consistency with the Committee's other recommendations, staff has commissioned a brief study of two questions: what configuration of authorization bills would be most likely to produce systematic Congressional consideration of foreign affairs resource issues; and what pattern of presentation of the foreign policy-related programs of the executive budget would best assist the Congress in assessing those programs. Pending the outcome of the study the full statement of these recommendations is deferred. Not under review is the Committee's further budget recommendation concerning membership on the House and Senate Budget Committees. The discussion and recommendations on this point follows.]

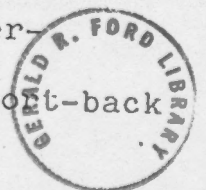


As foreign and domestic issues merge and interact, it will prove important that the foreign affairs perspective be represented in decision-making on all major policy issues, and especially those of resource allocation. Accordingly, the Commission recommends that the major foreign policy legislative committees have representation on the Budget Committees of both Houses of the Congress.

The Commission believes that the necessity for closer supervision of foreign programs and policies is not limited to the intelligence field. We find that many programs outlive the circumstances which made them useful, and we expect that in the future, as the world changes at increasing rates, many more will do so. We believe, therefore, that the Congress must meet far more systematically its responsibilities for the evaluation and review of major programs, and of the policies on which they are based. To that end, we offer a number of related proposals.

Increased Use of Report-Back and Time-Limit Provisions.

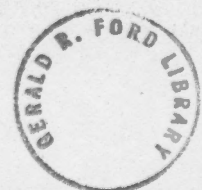
Review and oversight, the Commission recognizes, is a subtle and complex process. Much of the most effective oversight is necessarily performed informally. Nevertheless, two specific devices -- and approaches to their use -- seem likely to improve Congressional review and oversight performance. The Commission recommends greater use of report-back





requirements for both Executive testimony and written reports from Executive officials to the Congress, and more frequent incorporation of statutory time limits, particularly on new programs and policies.

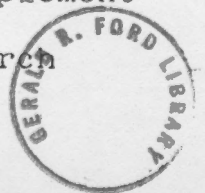
At present, Executive officials rarely know when or whether they will be required to account to the Congress for their actions in implementing particular foreign policy programs or policies. The use of legislative "contracts" -- statutory provisions incorporated in authorizing legislation, and binding key officials to appear before appropriate committees at specific times to testify on program performance -- better assures the timely appearance of such officials, and increases their accountability to Congress. Similarly, greater use of statutory provisions automatically terminating program and policy authority in the absence of Congressional renewal establishes a schedule of regular and substantial Congressional review. The Commission notes that both practices have become more common in recent years; it believes that their use should become still more comprehensive.



More Effective Use of Reports. Second, increased efforts should be made to consolidate, rationalize, and improve the quality and use of written reports to Congress from Executive Branch agencies required by law. At a minimum, a central Congressional repository for such reports, efficient procedures for making the reports available to any Members interested in them, and convenient means for maintaining security of classified reports, should be developed, as proposed above, by the Joint Committee on National Security.

Better Staffing. Additionally, the Commission urges that the trend toward professional staffing, available to both majority and minority and under the central supervision of staff directors, be continued in the foreign affairs oriented Committees of the Congress. The Congressional dissatisfaction with staff support revealed by the Survey is justified, we believe. Solidly competent and knowledgeable staff are essential to serious program review.

Analytic Capability. Equally important is the availability of supporting analytic resources to supplement Committee staffs. Over the last five years Congress has substantially expanded the Congressional Research Service, strengthened the General Accounting Office, and created an Office of Technology Assessment and the Congressional Budget Office to supplement its other facilities. But this rapid growth in research



capability has still not provided Congress with fully adequate research and informational capacity for foreign policy issues. The reasons, we believe, are several.

Attaining the Promise of CRS. The central problem is that the Congressional Research Service has never reached the levels of usefulness that either the Congress or CRS itself have sought. Despite more than a doubling in size since 1970, a substantial growth in committee requests for policy research, and the imaginative use by CRS of automated information systems, the relationship between CRS and the Congress is characterized on both sides by frustration. Researchers lack the freedom and support to address major policy issues in depth; the Congress lacks assurance that CRS will provide timely and useful studies of program alternatives.

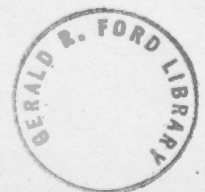
The Commission finds that the major difficulty is that there exists no body representing the interests of the Congress as a whole, authorized to provide CRS with policy guidance, assistance in securing resources, and some measure of insulation against the lower priority concerns which deflect it from sustained work on major issues. The Commission therefore recommends that Congress designate a joint committee to be responsible for performing those functions, thus insuring that some faction of CRS staff is able to focus steadily on issues which Congress as a whole accords high priority.





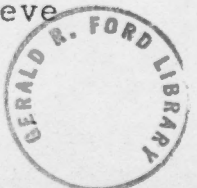
Additional Authority for the GAO. Another deficiency, we find, concerns current limitations on the General Accounting Office. The GAO is crucial to effective Congressional review of Executive action. The GAO provides Congress with authoritative financial audits, budgetary information, and evaluations of the effectiveness of government programs. The Commission finds, however, that certain information required by GAO to meet its responsibilities to the Congress may now be denied it. Accordingly, the Commission recommends that Congress provide the GAO with authority, under careful guidelines and Congressional review, to issue subpoenas and to initiate civil suits to obtain information it requires from federal agencies or from private persons or organizations working under federal contracts.

The Commission also believes that the GAO can usefully assist international organizations to develop more comprehensive capabilities for financial review and program evaluation, as GAO now has statutory authority to do. The objective review by the Congress of the work of international organizations should form the major basis for the support of such organizations as they come to play increasingly important roles. The Congress should continue to press, through GAO, for more adequate accounting of international programs to which the U.S. has contributed.



More Effective Use of Available Resources. The remaining deficiencies in Congressional use of program information and research results, we believe, from insufficient central supervision of its own growing resources, and low levels of Congressional use of independent non-governmental sources of analysis. Accordingly, the Commission recommends that the House Commission on Information and Facilities, created as part of the Committee Reform Act of 1974, look with special care at the research support available to Congress when legislating in foreign policy. We also suggest that the Information Commission seek better management of Congressional use of research by designating a central supervisory committee such as the Joint Committee on Congressional Operations to oversee research organization; and that it seek to facilitate more common use by the Congress of the policy research capabilities of universities and non-profit research centers.

One ready means of helping achieving this last goal would be for the Foreign Affairs and Foreign Relations Committees periodically to publish a detailed summary of their research interests and priorities. Such a publication should specify the major questions of fact pertinent to future foreign policy determinations on which the Congress would most welcome assistance. The list should include major study requests from foreign policy committees to CRS. Such a list, we believe



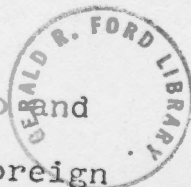
would encourage many public and private research organizations to orient planned research toward Congressional concerns, and thus to increase the availability of independent analysis and information useful to the Congress without need for additional research bureaucracies. The Commission recommends such a publication.

### III. TOWARD GREATER ATTENTIVENESS TO FOREIGN AFFAIRS

We conclude our observations on the Congress and foreign affairs with three modest proposals intended to better equip Congress and the public to deal knowledgeably with a world in which foreign affairs will touch our lives in all aspects more powerfully and directly than heretofore.

Travel. The Commission finds that foreign travel, in familiarizing Members of Congress with overseas conditions and foreign perspectives, has a generally beneficial effect upon the making of U.S. foreign policy and on the ability of Members to perform their legislative responsibilities wisely. The benefits for public policy of Congressional travel could, in the judgment of the Commission, be increased by more extended travel, by greater use of Congressional staff (particularly Foreign and International Relations Committees investigative staff) abroad, and by increased travel by "teams" of Members rather than individuals.

Full, written reports by staff and Members prior to and following travel abroad, as currently required in the Foreign





Relations Committee under its rules, are particularly valuable in helping assure coordinated, purposeful travel and a broad sharing of travel findings and observations among Members and staff who can utilize such information. Foreign travel reporting requirements should be extended to the entire Congress, and an improved system of circulating, monitoring, and evaluating these reports developed. Policies issued in 1974 by each House regarding financing of staff travel might serve as a model and first step toward more comprehensive guidelines.

The Commission endorses detailed and timely financial disclosure, in a form conveniently accessible to the public and the press, of the costs of all foreign travel and the sources of travel funds whether utilized by Members of Congress or other Government officials.

#### Congressional Participation in International Negotiations.

Similarly, the Commission urges and endorses greater participation by Members of Congress in international negotiations, particularly multilateral negotiations, as a means of increasing the first-hand information available to Members on foreign policy and its conduct. It found persuasive, however, arguments on behalf of limiting the role of Congressional participants in such negotiations to that of observers and advisers, rather than plenary participants, particularly in cases where any agreements growing out of such negotiation



may be subject to specific Congressional review or approval. Congress should stipulate advisory participation of Members in legislation directing or authorizing important international negotiations.

Public Awareness. Finally the Commission notes that, in the end, the adequacy of our foreign policy will depend on the informed judgment of the American people. The Commission believes that the Congress, and especially the Foreign and International Relations Committees have a consequent responsibility to help inform the American people of the purposes and effects of our foreign policy. History suggests, moreover, that the public will respond to the thoughtful and probing review of major foreign policy issues; the China Policy hearings of the Senate Foreign Relations Committee in 1966 provide an excellent model.

Those hearings, moreover, demonstrated the importance of television coverage. The Commission feels that public awareness of foreign policy questions requires television coverage of major foreign policy hearings and Committee deliberations. The Commission recommends that such television coverage, live or taped, be made routinely available to private and public networks, perhaps on a gradual basis over time as recently recommended by the Joint Committee on Congressional Operations. The Commission believes that



whatever strains on the normal functioning of Congress might occur as a result would be more than offset by increased public understanding of the foreign policy issues facing the nation.





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DEPARTMENT OF STATE  
THE LEGAL ADVISER  
WASHINGTON

June 27, 1975

MEMORANDUM FOR MR. BUCHEN

FROM: Monroe Leigh W.L.  
Subject: Panama Negotiations  
- Snyder Amendment

In accordance with your request I enclose a copy of the Snyder Amendment as adopted yesterday as a rider to H.R. 8121, the State Department appropriation bill.

I also enclose for your information a Xerox copy of pertinent pages from Professor Henkin's treatise, Foreign Affairs and the Constitution. As you will see, he gives a number of examples of unconstitutional interference with the President's prerogative to "negotiate" in the conduct of foreign affairs. There is also a list of "unconstitutional conditions" which have been attached to appropriation measures in the past and have led to either rejection by the President or disregard by the President.

Attachments:

As stated.



TEXT OF § 104 OF H.R. 8121

STATE, COMMERCE, JUSTICE AND  
THE JUDICIARY APPROPRIATIONS

Adopted by Floor Amendment  
in the House  
Thursday, June 26, 1975

None of the funds appropriated in this  
Title shall be used for the purposes of  
negotiating the surrender or relinquish-  
ment of any U.S. rights in the Panama  
Canal Zone.





Herbin

## *The Distribution of Political Power*

### *"Executive Privilege"*

Presidents are frequently charged with failure to cooperate when they deny to Congress or its committees information or documents, whether to preserve "confidentiality" of operations within the Executive Branch, or because the Executive believes that they should be "classified" and concealed in the national interest.<sup>61</sup> In regard to foreign relations, in particular, Presidents often claim that disclosure would jeopardize national policies, offend some friendly nation, or otherwise embarrass the United States in its relations with other nations. "Executive privilege" was asserted by President Washington to withhold from the House of Representatives papers relating to the negotiation of the Jay Treaty,<sup>62</sup> but while he justified that in part because the House had no constitutional function in the making of treaties, later Presidents refused documents and information which were indisputably relevant to legitimate Congressional concerns.<sup>63</sup>

This issue, too, has not been resolved in principle,<sup>64</sup> but in fact Presidents have prevailed.<sup>65</sup> Congress has never sought to enforce its demands by threat of criminal sanction or citation for contempt against executive officials.<sup>66</sup> In foreign affairs, in particular, Congress has itself recognized limitations, for while it has long demanded reports of all executive departments, it has requested them of the State Department only "if not incompatible with the public interest."<sup>67</sup> But Presidents have been careful not to deny Congress lightly, or too often.<sup>68</sup>

### **Interference**

✓ Separation of powers has also contributed to charges, usually by the President against Congress, of unconstitutional "interference." Differing conceptions of their respective constitutional authority have sometimes led Congress to enjoin the President in matters which he deemed not its business: Congress has directed Presidents to negotiate or to denounce treaties;<sup>69</sup> once Congress directed President Grant to notify certain diplomatic and consular establishments "to close their offices."<sup>70</sup> A known dead letter, still on the statute books (since 1913), provides:<sup>71</sup>

Hereafter the Executive shall not extend or accept any invitation to participate in any international con-





DEPARTMENT OF STATE  
THE LEGAL ADVISER  
WASHINGTON

July 18, 1975

MEMORANDUM FOR MR. BUCHEN

Attached is a memorandum prepared by  
Jim Michel of this office on the Legislative  
History of 22 U.S.C. 2680(b).

It seems to me that his conclusions  
are consistent with those which you had already  
reached when you and I last discussed this  
provision of law some weeks ago.

*Monroe Leigh*  
Monroe Leigh

Attachment:

As stated.





DEPARTMENT OF STATE

Washington, D.C. 20520

July 15, 1975

MEMORANDUM

TO : L - Mr. Monroe Leigh  
FROM : L/PM - James H. Michel *JHM*  
SUBJECT: Legislative History  
of 22 U.S.C. 2680(b)

At your request, I have examined the legislative history of 22 U.S.C. 2680(b) which provides as follows:

The Department of State shall keep the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives fully and currently informed with respect to all activities and responsibilities within the jurisdiction of these committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either such committee relating to any such activity or responsibility.

The above-quoted provision originated in S. 1894 (92d Cong., 1st Sess.), introduced by Senator Fulbright (117 Cong. Rec. 15797, May 19, 1971). This bill was not acted upon by the Foreign Relations Committee, to which it was referred. However, the committee included this provision in S. 2820, the foreign assistance bill reported on November 8, 1971.

The committee report (S.Rept. No. 92-432) indicates at page 17 a dissatisfaction with Executive Branch responses to Congressional inquiries, but does not suggest an intent to impose any affirmative duty upon the Department to provide specific information not requested by the committees.





The Senate debate on S. 2820, and its companion bill, S. 2819, contains similar complaints by Senator Fulbright about Executive Branch delays and inadequacies in responding to Congressional requests for information. In particular, the complaint was an alleged lack of responsiveness on the subject of Administration intentions relative to Cambodia by both the Secretary of State, in testimony before the Foreign Relations Committee, and by the Department of Defense and the Administration generally in refusing to release to the committee its five-year military aid plans for Cambodia. This issue was the subject of a decision by President Nixon to invoke Executive privilege. However, the debate does not indicate that this particular provision was intended to require anything more specific than an overall improvement in Executive Branch responsiveness to the informational needs of Congress. See 117 Cong.Rec. 40167-40170, 40174.

The House-Senate conference report (S.Rept. No. 92-590) eliminated a feature of the original Senate proposal which would have required the Department of State to report to Congress on the activities of other government agencies operating overseas, but provides no clarification of legislative intent.

Since the enactment of 22 U.S.C. 2680(b), I am unaware of any Congressional requests for reports under this statute in addition to those already furnished under other, more specific legislation or on a voluntary basis. Similarly, I am unaware of any initiative by the Department to provide additional reports on the basis of the statute.

In view of the foregoing, it would appear that 22 U.S.C. 2680(b) may be regarded not as an additional requirement, but as a reinforcement of the Department's responsibilities under other laws which have been or may be enacted to assist the concerned committees in carrying out their responsibilities. Of course, neither this legislation nor any other Act of Congress, can diminish the President's constitutional authority to withhold information in appropriate circumstances.

L/PM:JHMichel/JMIwry:edk  
ext. 20557



THE WHITE HOUSE

WASHINGTON

July 21, 1975

Dear John:

I am writing with regard to an amendment which was passed in the House of Representatives to H.R. 8121. The intention of this amendment was to suspend our negotiations with Panama by prohibiting the use of State Department funds for that purpose.

As you know, during the last three administrations, the United States has been engaged in a discussion with the Republic of Panama relating to the Canal. The negotiations, which have received the support of each administration in turn, are continuing, with the goal of reaching an agreement which would accommodate the needs of both the United States and Panama, while at the same time protecting our basic interests in defense and operation of the Canal. Panama has engaged in these negotiations on the assumption that the United States is operating in good faith and that any agreement reached would be considered on its merits according to our full constitutional process. Suspension of these discussions now, without full consideration of an agreement, could seriously damage our relations with Panama and our interests throughout Latin America.

The provision also raises a constitutional question related to the treaty-making process under which the President is authorized to negotiate with foreign countries and the Senate to give its advice and consent to any treaty.

Our negotiations are not yet completed and a number of questions remain unresolved. I have no intention of proposing to Congress any agreement which would not protect



U.S. vital interests. We will consult with the Congress as the negotiations proceed and of course submit any treaty to the full constitutional process, which means that the Senate will have an opportunity to review it under the advice and consent procedures.

It is my hope that you and the members of the Appropriations Committee will support me in seeing that this provision is removed from H. R. 8121.

Sincerely,

*Gerald R. Ford*

The Honorable John L. McClellan  
United States Senate  
Washington, D.C. 20510





THE WHITE HOUSE  
WASHINGTON

July 21, 1975 . . .

Dear John:

I am writing to express my concern over the provisions of an amendment to H.R. 8121, passed by the House of Representatives on June 26, which is intended to suspend our negotiations with the Republic of Panama by prohibiting the use of State Department appropriations for that purpose.

As you know, negotiations with Panama regarding the Canal were initiated during the administration of President Johnson and have continued under every administration since then. They are proceeding with the goal of reaching an agreement which would accommodate the needs of both nations while protecting our basic interests in the defense and operation of the Canal. Panama has always assumed that the United States is negotiating in good faith and that any agreement reached would receive a full hearing in Congress based on its merits. Action to terminate the negotiations now without consideration of the substance of an agreement could seriously damage our relations with Panama and our interests in the Canal area. Moreover, it could lead to deterioration in our relations with other Latin American countries.

This provision also raises questions of a constitutional nature relating to the role of the Executive as well as the Senate in the treaty-making process.

A number of difficult questions remain to be resolved in our negotiations with Panama. I can assure you that I have no intention of approving or proposing to Congress any agreement which would not protect U.S. vital interests. We will



- 2 -

be consulting closely with the Congress as the discussions continue. Of course, any treaty which may be agreed upon will be submitted to the full constitutional process, which means that the Senate will have an opportunity to review it under the advice and consent procedures.

I hope I can count on your support and that of other members of the Foreign Relations Committee in removing this provision when the Senate considers H. R. 8121.

Sincerely,

*Richard R. Ford*

The Honorable John Sparkman  
United States Senate  
Washington, D.C. 20510



ARGUMENTS ON THE PANAMA AMENDMENT

-- The proposed Amendment to H.R. 8121 seriously endangers U.S. relations with Panama and constitutes an unfortunate precedent which could interfere with established constitutional processes. It represents an attempt to:

- Infringe on the President's responsibility under the Constitution to negotiate treaties with foreign governments;
- Preempt the Senate's constitutional prerogative to advise and consent as to treaties negotiated by the Executive.

-- The United States' commitment to negotiate the Canal issue is 11 years old. It was first made by President Johnson in consultation with former Presidents Truman and Eisenhower. It has been supported by Presidents Nixon and Ford. To abandon it without serious consideration of the product of these negotiations would seriously damage our credibility in foreign affairs with Panama, Latin America, and elsewhere in the world.

-- Whatever views one may have on the treaty, its consideration should await presentation to the Senate of the entire agreement with all its provisions. An appropriation bill is not an appropriate vehicle for such consideration, nor is this an appropriate time, before all the provisions can be considered.

-- Continuation of the negotiations is extremely important to our interests in Panama. Congressional action to suspend negotiations without consideration of a treaty on its merits would be viewed as a breach of faith and might stimulate an extreme reaction in Panama where at least a fair hearing on a treaty has always been assumed.