

Center for American Progress



Congressional Limitations and Requirements for Military Deployments and Funding

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The 110th Congress has an important responsibility to shape the country's national security policy in order to make Americans safer and advance U.S. national security interests more effectively.

In sharp contrast to the 109th Congress, this new Congress will do more to exercise its powers and responsibility as a co-equal branch of government in shaping the future direction of the country's Iraq policy. Such a policy will be successful only if it enjoys the informed consent of the American people. Unlike the previous Congress, the 110th seems to recognize the awesome responsibility they have to perform due diligence on our policy and on the President's request for ever more resources to pursue that policy.

This memorandum outlines way in which previous Congresses have acted to ensure that whatever steps the President has sought to take are taken in a way that maximizes opportunities to strengthen American national security and reflect the concerns and will of the American people.

As the examples below demonstrate, past Congresses have chosen among several different policy levers to guide U.S. national security policy as it relates to the deployment of American troops. Broadly speaking, the Congress can:

- Condition, limit or shape the timing and nature of troop deployments and the missions they are authorized to undertake;
- Cap the size of military deployments; and
- Prohibit funding for existing or prospective deployments.

Since 1970, there have been several instances in which these powers were exercised and passed into law by Congress. Several of these are detailed below. Each of these provisions reflects the basic fact that the founding fathers deliberately created a system of government containing branches that were both interdependent and competitive. Each has a specific role to play and each needs to respect the role of the other branches. While the president is commander-in-chief, Congress retains the power (with the consent of the president) to establish the laws by which we conduct foreign policy and more importantly, must decide whether the activities in which the president is engaged are deserving of the resources from the American people he is requesting to conduct those policies.

Additionally, there have been hundreds of amendments – which did not ultimately become law – where members of Congress sought to shape overseas deployments. These amendments reflect modern congressional understanding of Congress’s power and authority. In particular, there were a series of attempts by Republicans and Democrats throughout the 1990s to influence deployments in the Balkans. Though largely unsuccessful on policy grounds, the provisions – an illustrative list of which appear at the back of this document – were attempted by prominent Republicans and Democrats, many of whom remain involved in today’s debate on Congress’s role in national security policy. What was true then remains true now: Congress has an obligation to remain engaged on shaping national security policy.

Examples of Funding and Authorization Limitations Enacted into Law

January 1991. P.L. 102-1 – A joint resolution authorizing the use of force against Iraq.¹ Congress granted the president the authority to use force in Iraq but conditioned it on him certifying first that means other than war would not result in Iraqi compliance with UN Security Council resolutions.

October 1994. P.L. 103-423 – A joint resolution regarding U.S. Policy Toward Haiti. Congress supported a “prompt and orderly withdrawal of all United States Armed Forces from Haiti as soon as possible.”²

September 2001. P.L. 107-40 – A joint resolution authorizing the use of force in Afghanistan.³ The president initially sought authorization to use force to “deter and preempt any future acts of terrorism or aggression against the United States.” The final resolution authorized “all necessary and appropriate force against those nations, organizations, or persons he determines planned authorized committed or aided” the 9/11 attacks.⁴

October 2002. P.L. 107-243 – A joint resolution authorizing the use of force in Iraq.⁵ Like the Afghanistan resolution a year earlier, the Iraq resolution reflected some changes sought by Congress. For example, the president initially sought authorization to use force “to restore peace and security in the region.” Congress succeeded in striking that provision, and made the exercise of the authority granted in the resolution conditional on the president certifying that Iraq would not harm the war on terrorism, but it failed in attempts to insert other limitations on the president.⁶

Troop Caps Enacted Into Law

December 1974. P.L. 93-559 – Foreign Assistance Act of 1974. The Congress established a personnel ceiling of 4000 Americans in Vietnam within 6 months of enactment and 3000 Americans within one year.⁷

June 1983. P.L. 98-43 – The Lebanon Emergency Assistance Act of 1983. The Congress required the president to return to seek statutory authorization if he sought to expand the size of the U.S. contingent of the Multinational Force in Lebanon.⁸

June 1984. P.L. 98-525 – The Defense Authorization Act. The Congress capped the end strength level of United States forces assigned to permanent duty in European NATO countries at 324,400.⁹

July 2000. P.L. 106-246 – Military Construction Appropriations and For Other Purposes – Personnel Ceiling in Colombia: “funds appropriated or otherwise made available by this or any other Act (including funds described in subsection (c)) may be available for— (A) ... the assignment of any United States military personnel for temporary or permanent duty in Colombia in connection with support of Plan Colombia if that assignment would cause the number of United States military personnel so assigned in Colombia to exceed 500; or (B) the employment of any United States individual civilian retained as a contractor in Colombia if that employment would cause the total number of United States individual civilian contractors employed in Colombia in support of Plan Colombia who are funded by Federal funds to exceed 300.”¹⁰

Funding Restrictions Enacted Into Law

December 1970. P.L. 91-652 – Supplemental Foreign Assistance Law. The Church-Cooper amendment prohibited the use of any funds for the introduction of U.S. troops to Cambodia or provide military advisors to Cambodian forces.¹¹

June 1973. P.L. 93-50 – Supplemental Foreign Assistance, “None of the Funds herein appropriated under this act may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam, and South Vietnam by United States forces, and after August 15, 1974, no other funds heretofore appropriated under any other act may be expended for such purposes.”¹²

December 1982. P.L. 98-215 – Defense Appropriations Act. In what became known as the Boland Amendment, Congress prohibited covert military assistance for Nicaragua.¹³

November 1993. P.L. 103-139. The Congress limited the use of funding in Somalia for operations of U.S. military personnel only until March 31, 1994, permitting expenditure of funds for the mission thereafter only if the president sought and Congress provided specific authorization.¹⁴

September 1994. P.L. 103-335. The Congress declared “no funds provided in this Act are available for United States military participation to continue Operations Restore Hope in or around Rwanda after October 7, 1994, except for any action that is necessary to protect the lives of United States citizens.”¹⁵

June 1998. P.L. 105-85 – Defense Authorization Bill. The Congress prohibited funding for Bosnia “after June 30, 1998, unless the President, not later than May 15, 1998, and after consultation with the bipartisan leadership of the two Houses of Congress, transmits to Congress a certification— (1) that the continued presence of United States ground combat forces, after June 30, 1998, in the Republic of Bosnia and Herzegovina is required in order to meet the national security interests of the United States; and (2) that after June 30, 1998, it will remain United States policy that United States ground forces will not serve as, or be used as, civil police in the Republic of Bosnia and Herzegovina.”¹⁶

Additional Examples Where Congressional Efforts to Influence Policy Were Not Enacted into Law

- In 1994, Senator Jesse Helms tried unsuccessfully to prohibit funding for any U.S. military operations in Haiti and the House attempted to cut \$1.2 billion in peacekeeping and humanitarian funds for Haiti, Bosnia, Somalia and Iraq.¹⁷
- In 1995, Senator Gregg (R-NH) sought to cap the allowable number of combat troops deployed to Bosnia at 25,000 and House members sought unsuccessfully to prohibit any federal funds from being used for deployment in any peacekeeping operations in Bosnia-Herzegovina.¹⁸
- Similarly in 1998, Senators Warner and Byrd sought to cut off funding for the Kosovo deployment unless the president sought and received explicit congressional authorization and developed a plan to turn the peacekeeping duties over to U.S. allies by July 1, 2001.
- Senators Warner and Byrd also sought to withhold a quarter of FY 2000 supplemental appropriations for operations in Kosovo until the president certified that NATO allies were fulfilling their requirements.¹⁹
- In 1999, in the House, Rep. Souder sought to prohibit funding for military operations in Yugoslavia.²⁰
- Rep. Spratt sought unsuccessfully in 2002 to require the president to seek congressional authority before using military force against Iraq without a UN resolution.²¹
- More recent supplemental bills for the wars in Iraq and Afghanistan also contained several proposed amendments to shape the direction of these military commitments. In 2003, Rep. David Obey sought to require half of all reconstruction aid to Iraq to be in the form of loans and Rep. Henry Waxman sought to reduce Iraqi reconstruction funds by \$250 million.²²

Though they were defeated, those provisions reflect attempts by Congress to shape the president’s policy on military deployments. Taken alongside the several examples listed

above that were enacted into law – demonstrates that the president should expect that Congress can and will shape U.S. policy as it relates to military deployments.

¹ <http://www.milnet.com/public-law-102-1.html>

² P.L. No. 103-423 § 1, 108 Stat. 4358 (1994) (expressing the sense of the Congress).

³ <http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>

⁴ Fisher, *Presidential War Power* (2004), pp. 208-209. The change in the authorization is significant insofar as it reflects a concern in Congress that the President wanted too broad a grant of authority – in this instance a grant of authority so broad as to be timeless in its scope of “any future act ...” – to deploy troops in the aftermath of 9-11.

⁵ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ243.107

⁶ Daschle, *Like No Other Time* (2003), p. 244.

⁷ <http://www.fas.org/man/crs/RS20775.pdf>

⁸ <http://www.opencrs.com/document/RL31693/2006-01-27%2000:00:00>; It appears that President Reagan recognized the limitation as such in his signing statement on the law.

<http://www.presidency.ucsb.edu/ws/print.php?pid=41523>

⁹ [Senate Amendment 3266](#) to [S.2723](#) was a Nunn amendment modified by a Cohen amendment. It was agreed to 94-3 in Roll Call vote #150.

¹⁰ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_bills&docid=f:h4425enr.txt.pdf

¹¹ <http://www.fas.org/man/crs/RS20775.pdf>

¹² The provision was proposed by Senator Eagleton and since it included a prohibition against the funding in that Supplemental bill and all other bills passed to date it was more far-reaching than a provision offered by Rep. Clarence Long and agreed to in the House. Eagleton’s provision was included in the conference report, which was vetoed by President Nixon because it “would cripple or destroy the chances for an effective negotiated settlement in Cambodia and the withdrawal of all North Vietnamese troops.” Attempts to override the veto failed resulting in a scaled back prohibition similar to that proposed by Rep. Long. Fisher, *Presidential War Power* (2004), pp. 142-143.

¹³ See [H.AMDT.461](#) to [H.R.2968](#) to the Defense Appropriations Act of 1983. The Boland Amendment was passed by the House of Representatives 411-0 on December 8, 1982, and was signed by President Ronald Reagan on December 21, 1982.

¹⁴ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=103_cong_bills&docid=f:h3116enr.txt.pdf

¹⁵ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=103_cong_bills&docid=f:h4650enr.txt.pdf

¹⁶ <http://thomas.loc.gov/cgi-bin/query/F?c105:6:./temp/~c105NSW5sK:e980283>:

¹⁷ Mages, Lisa, “U.S. Armed Forces Abroad: Selected Congressional Roll Call Votes Since 1982,” Congressional Research Service, January 27, 2006.

¹⁸ See Congressional Record, 1005, pp. S27050-57 (see, too, Sen. Cohen on need for Congressional action)

¹⁹ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=106&session=2&vote=00105

²⁰ House Amendment # 160, defeated in Roll Call # [187](#).

²¹ *CQ Weekly*, October 5 and October 12.

²² Mages, pp. 23-24.