

Congress retakes traditional war role

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In the run-up to the U.S. invasion of Iraq in 2003 and for some time thereafter, Congress played a largely quiescent role in military affairs. The climate changed, however, after the 2006 midterm elections, when the voters gave control of both houses to the Democrats on a wave of anti-war sentiment.

This week's sharp exchanges between Army Gen. David Petraeus and members of Congress during House and Senate hearings erased any lingering doubt that the dormant phase is over.

Divisions over the proper role of Congress in setting war policy are nearly as old as the Republic. This week's nationally televised hearings are in keeping with the active role lawmakers have played, on and off, in overseeing U.S. military engagements since 1789. Prior Congresses have by turns authorized, funded and terminated a host of major military engagements.

At times, Congress became involved with the active support of wartime presidents, as in World War II, when a Senate committee headed by then-Sen. Harry Truman (D-Mo.) investigated fraud in war production.

The probe saved taxpayers more than \$15 billion, or some \$180 billion in today's dollars. On the other hand, in 1944, Congress denied President Franklin D. Roosevelt his request to impose a civilian labor draft to step up production in war plants.

Toward the other end of the spectrum, George W. Bush is hardly the first president to argue that Congress lacks the authority to set limits or conditions on the use of U.S. armed forces abroad.

Nevertheless, even Bush had to bend to congressional will in 2001, when Congress denied him blanket authority to deter and prevent acts of terrorism.

One of the first instances of division over who should set war policy occurred in 1810. Rep. Nathaniel Macon (D-N.C.), a three-term speaker of the House, declared, "If we cannot inquire into the state of the Army, it follows that the Army belongs to the president and not to the nation."

In 1812, James Madison, the nation's fourth president, took the opposite view. In a letter to Thomas Jefferson, who had preceded him in office, Madison wrote, "I have much doubted whether, in case of war, Congress would find it practicable to do their part of the business.

That a body containing 100 lawyers in it should direct the measures of a war is, I fear, impossible." Five months later, with Madison at the helm, the United States found itself at war with Great Britain.

Although Congress has formally declared war only five times, it has authorized the use of force on 15 other occasions. Some scholars believe, however, that the lawmakers have allowed their constitutional prerogatives to erode by failing to take decisive stands either supporting or opposing presidential military initiatives — most recently over Iraq.

Contentious hearings at times of war are also nothing new.

From 1861 to 1864, a special committee on the conduct of the war repeatedly pressed President Abraham Lincoln to replace George McClellan and other generals whom the panel perceived as unsuccessful in attacking the Confederate South.

More recently, in 1951, at the height of the Korean War, a series of televised congressional hearings defused initial public outrage over the firing of Gen. Douglas MacArthur for insubordination by then-President Truman. In 1967, hearings on restrictions imposed by President Lyndon Johnson on the bombing of North Vietnam led to an increase in the scope of the permitted targets.

Reviewing the proper congressional role in the launching and execution of military operations, Charles Stevenson, an adviser on national security to four U.S. senators, found that much of the debate has focused on the question of whether to initiate hostilities.

Stevenson, who now teaches at Johns Hopkins' Nitze School of Advanced International Studies, divides the disputant sides into "presidentialists" and "purists."

In his newly published book "Congress at War," Stevenson notes that "in an age of nuclear weapons and terrorism," presidentialists contend "the need for urgent action, perhaps even preemption, supersedes the 18th-century notions embedded in the Constitution."

By contrast, purists hold that prior authorization needs to be secured in nearly all cases when the armed forces are sent into combat.

Stevenson notes that "some in Congress found the War Powers Act [of 1973] defective precisely because it allowed the president to send troops into combat for 60 days without prior authorization."

However, all presidents since have held the resolution to be unconstitutional based on

several arguments, including the separation of powers between the executive and legislative branch.

Whatever the Constitution may or may not dictate, Stevenson found that the “historical record shows that some presidents have initiated the use of force without suffering congressional sanctions,” while “some Congresses have acted successfully to restrain commanders in chief.”

How, if at all, this balance will be struck in the 110th Congress remains an open question.

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