

The United States Congress on the Path to Glory

On March 9, 2015, an open letter, drafted by United States Senator Tom Cotton (R-Ark.) and signed by 47 senators, was sent to the leaders of the Islamic Republic of Iran. It sought to enlighten the Iranians about two features of the United States Constitution. One was that Congress plays a significant role in ratifying international agreements negotiated by the U.S. president. The other was that a president can serve only two four-year terms, whereas senators may serve an unlimited number of six-year terms.

Therefore, the letter concluded, any agreement on the nuclear program of Iran that is not approved by Congress would be considered merely an executive agreement made by the existing president and could be overturned by his successor. The crucial implication is that Congress must participate in the approval of an agreement about the number and kind of centrifuges in the hands of Iran so that the country is not permitted to become a breakout nuclear state.

Secretary of State John Kerry, on March 15, 2015, called the letter "unprecedented." Certainly it was unusual, and some critics referred to it as a possible violation of the 1799 Logan Act. This statute forbids a U.S. citizen, acting without official authority, from influencing disputes or controversies involving the U.S. and a foreign government.

However, no one has ever been prosecuted under the Logan Act, though many citizens have sought to influence U.S. policy.

Among them is John Kerry himself. While a senator, he was meeting Vietnamese leaders in Paris even though the U.S. was still at war with their country. Other would-be policy-makers include Jane Fonda (Hanoi 1972), Nancy Pelosi (Syria 2007), George McGovern (Cuba 1975), Jesse Jackson (Syria and

Cuba 1983 and 1984), House Speaker Jim Wright (Nicaragua 1987), and Richard Nixon (China 1976).

The letter of the senators concerns the nature of any deal that may be negotiated between the United States and Iran, and the role that Congress should play in deciding on a deal. However, the letter raises broader questions about the controversial and complex issue of making and changing U.S. foreign policy that directly relates to the concerns of the senators.

There is no clear answer to the question of who has the final determination of foreign policy, or the exact nature and exercise of power in its making. It is pertinent to examine the respective functions, diplomatically, economically, and militarily, of the executive and legislative branches of the U.S. government, and the role of Congress in issues of foreign policy, including trade, human rights, foreign aid, immigration, treaties, and declaration and conduct of war.

The Constitution gives the president the power to make binding treaties and agreements, but it is not always clear if the consent of the Senate is required. In general, the Senate must approve treaties by a two-thirds majority before they can be ratified. Increasingly in modern times, presidents have made executive agreements – about 90 percent of all international agreements. These do not require congressional approval. However, the next U.S. president can reverse those executive agreements, now amounting to thousands on a wide range of issues.

Presidents can initiate foreign policy in a variety of ways. They can negotiate international agreements, propose legislation, respond to foreign events, make policy statements, and originate direct action.

Congress can also make foreign policy by passing legislation, such as the Jackson-Vanik Amendment in 1975, and resolutions,

issuing policy statements, providing informal advice, and conducting investigations and proposing funding, such as the subsidy in 1991 for the upgrading the port of Haifa facilities for the U.S. Sixth Fleet. Congress must consent to spending and approve trade agreements, and can investigate governmental action, as in the Fast and Furious Operation, (2010) and the attack on the U.S. consulate in Benghazi, Libya (2012).

Occasionally, as with the Versailles Treaty in 1919, the Comprehensive Test Ban Treaty in 1999, and the Law of the Sea Convention in 1982 and 1999, Congress has expressed disapproval of presidential initiatives, or has refused funding, as in the cases of the closing of the prison at Guantánamo Bay in 2013, and the proposal to send \$450 million to the Muslim Brotherhood regime in Egypt in 2012.

Controversy exists on the imperative issue of the declaration of war or sending U.S. forces abroad. Congress has authority to declare war (Article 1, section 8 of the Constitution), but in fact only five wars, in 1812, 1846, 1898, 1917, and 1941, have been declared by Congress. Presidents, as commander-in-chief (Article II, section 2), have power to wage war and have ordered military interventions, unauthorized by Congress, in more than 200 other cases. Among the more important recent engagements were the Korean War (Truman 1950), the Vietnam War (Johnson and Nixon 1964-75), the invasion of Grenada (Reagan 1983), invasion of the Persian Gulf (George H.W. Bush 1990), Yugoslavia (Clinton), Iraq (Bush 2003) and Afghanistan (Obama 2011).

Congress did attempt to limit presidential power by the War Powers Resolution of 1973, passed by overriding a veto by President Nixon. This federal law is intended to limit the president's power to commit the United States to an armed conflict without the consent of Congress. According to the resolution, U.S. forces can be sent abroad only by a congressional declaration of war, or as a result of a national emergency.

However, since 1973, U.S. forces have been sent abroad without congressional consent. This is the case in Iraq, Afghanistan, and Libya.

The constitutional issue is germane to any deal resulting from the U.S.-Iran negotiations, and the power to impose or remove sanctions. Senator Bob Corker (R-Tenn.) has proposed a bill that Congress have the power to approve or reject an Iran deal made by President Obama, and that also calls for Iran to renounce its sponsorship of terrorism. The president has said he will veto such a bill. Senator Robert Menendez (D-NJ) has co-authored a different bill allowing new, more restrictive sanctions to be imposed on Iran.

There are two immediate critical constitutional issues. The first is whether President Obama is obliged to submit any agreement with Iran to the Senate for approval. The second is whether a bill passed by Congress requiring the president to submit the agreement to it as a condition for removing or reducing the sanctions is constitutional.

Evidently, both branches of the U.S. government must work together on issues of national security. It is appropriate for Congress to ensure that Iran is not left in a position to pursue its nuclear ambitions and have an unrestricted and unmonitored infrastructure capable of making weapons. It must also ensure that Iran does remove all the enriched material it presently has, that it ceases to enrich plutonium, and that sanctions will be continued, and even strengthened, until Iran does so.

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