The Usa in the International Relations: Military and Foreign Policy Powers of the Congress and the President

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Abstract: The problem of authority delimitation between several branches of government exists in all countries worldwide; however, this problem is the most urgent in the USA, because there is no clear delimitation in the Constitution of the country. The legislative and executive authorities used quite vague constitutional language at different development stages of American State and that branch of government, which was stronger than the other one, won. For instance, in the period of Washington, Jefferson and F. Roosevelt rule, the executive authority interpreted in their own benefit that Constitutional premises, which were devoted to military and foreign policy Presidential and Congress powers. At that time, in the last quarter of XIX and in 20-30s of XX, the victory was on the Congress side, as the state was governed by the "weak" Presidents. Because of long fight between the executive and legislative authorities, two approaches were formed - strict and loose construction of the Constitution of the USA.

Key words: The Congress · Constitutional powers · The President of the USA · Strict construction · Loose construction · Executive agreement · Imperial Presidency

INTRODUCTION

The early post-war years present the time of general relaxation of the Congress influence on the foreign policy and, consequently, strengthening of Presidential power. This relaxation was expressed neither in the change of political regime, nor in the rejection of constitutional and democratic norms, but in simple delegation of the part of the broadest Congress power to the executive authority.

In American historiography the interest to military and foreign policy power of the Congress and President is constant. The participation of American Forces in the Vietnamese War, the desire of the Congress to limit the Presidential powers in the military sphere and the public uproar resulted in the fact, that the problem of Constitutional powers of the President and Congress turned out to be in the center of the researchers' attention in 70-80s of the XX century [1-5]. In these papers the authors analyze the contradictions in the Constitution of the USA, quote the opinion of the Founding Fathers, judges, state and party leaders.

At the same time, strengthening of the USA in the international arena after the destruction of communist block and following military operations with participation of American Armed Forces in Asia and North Africa reopened a subject about the delineation of military and overseas powers of the executive and legislative authorities [6-10].

In order to consider objectively the role of executive and legislative authorities of the USA in elaboration of the foreign policy concept of the country after the Second World War, we are to analyze the process of strengthening of executive authority and to characterize the powers of legislative and executive authorities in the subject of foreign and military policies.

When writing this article, the author strictly followed two principles. The objectiveness principle presupposes the rejection from stereotypes and dogmatic statements, previously established in the historical science. It provided the objective evaluation of constitutional powers both of the President and the Congress of the USA. At the same time, the use of historicism principle allowed to consider historically the development of pro-Presidential and pro-Congress approaches. It provided a possibility to trace the connection between the intensity of emotions in delineation of authorities and strengthening of importance and role of the USA in the world arena.
In the political system of the USA, the Congress has a role of budget approval, declaration of war, formation and support of the Army and Fleet, regulation of trade with foreign states. The Chief Executive is the Commander-In-Chief of the Army and Fleet, has a right to enter into contract with foreign states, to appoint ambassadors and other placemen only on advice and by agreement with the Senate. However, only the President receives the ambassadors of the foreign states [11, pp: 36-37].

From the time of adoption of the Constitution and establishing of the new state, there arose the questions, which did not find the direct reflection in the Constitution: What does it mean "the advice and consent of the Senate" when treaty making? What to do with secret treaty making or other agreements? What authority should determine the strategic direction in the foreign policy? Is the Senate or the President accept or refuse to accept a new state? Can the President use the troops and to send them to the combat area if there is no official declaration of war on the part of the Congress? Whom should the Army and the Fleet obey in peace-time?

Some researchers assume that the President has an unlimited control over the Armed Forces. However, if to judge from the constitutional formula "The President is the Commander-In-Chief of the Army and Fleet of the USA, when he is called to active arms of the USA", then it becomes obvious, that the Armed Forces are imparted to the President only for the time of military operations and as the war is declared by the Congress, then, consequently, the President should implement the decision of the legislative authority. However, neither Congress, nor general public doubt in the President's right to meet a threat on the territory of the United States. If the President is going to use the national Army for other purposes, he should obtain the Senate's consent, as it is the Senate, which declares the war and bears responsibility for its control. The prosecution of the military actions (as well as the diplomacy) is handed over to the President because of the need to keep the security, quick reaction and efficiency. The security control will be better provided by the Presidential Administration and Military Departments, that hundred of senators, fifty members of the House of Representatives and thousands of their colleagues. As distinct from the Congress, the President gets the information promptly from his foreign agents, ministers and councillors. Then, the work of the Presidential Administration is more efficient, as the President works permanently, while the Congress "used to have vacations". The advantage of the Presidential power is also the internal unity, consistency of the course, private responsibility and determination. By contrast to this, there is no and cannot be the unity in the Congress, it is re-elected partially each two years and cannot follow one course and, consequently, bear the personal responsibility for the decisions made. The Senator U. Fulbright mentioned: "The House of Representatives is in very parochial mood, the Senate is so constant, that there needs the long time for the response to varying demands of the country in whole" [12, p. 118]. Michael Mezi assumes that the Congress thanks to it "fundamental nature is more appropriate for the debating of problems, than for approval of political control" [13, p. 75].

For its more than two hundred year history, The Congress declared the war just five times: Anglo-American War (1812-1814), Mexican War (1846-1848), Spanish-American War (1898), World War I (1917-1918) and World War II (1941-1945) [14, p. 425]. All other military conflicts with the participation of the US Armed Forces were and are carried out without the official declaration of war. It shows brightly, how the Presidential power strengthened its position. Even in the sphere of law making, completely handed over to the Congress by the Constitution, the Presidents stabilized their position. It can be traced as per the dynamics of law initiating on the part of the Congress and the White House. If in 1870-1910 the Presidents initiated only 5% of laws and the Congress - 53% and then in 1945-1954 33% of laws were presented by the President and only 17% - by the Congress [15, p. 332].

Over the whole period of history of the USA, the real power was concentrated in the hands of either Presidents, or Congressmen and was similar to the pendulum. From 1941, from the moment the USA entered into the Second World War, the pendulum "stopped" on the President's side in the solution of foreign policy problems. The following fact pays the attention: the Presidents usually strengthen their position during the war period, as they are frequently invested with emergency powers, which they do not want to part with subsequently. Therefore, they keep some prerogatives, not referring to them as per the Constitution and, traditionally, passing from one President to another. When the military actions were over, the presidential power, as a Commander-In-Chief, was lost and this remained till the middle of the XX century. However, the situation changed cardinally after 1945. When the First World War was over, the Congress took an active part in foreign policy actions, but in the first decades after the
Second World War it "presented the incomparable humility" [16, p. 94]. However, for some reason, it is not paid attention to the fact that the Congress did not express the "humility", but the agreement with the actions of the executive authority. The Congress supported the President Harry Truman, when he suggested to provide help of military and economic character to some European countries. Moreover, the Congress did not just "stamp" its agreement. This support came through several "battles" within the walls of the legislative authority. That is why it is incorrect to speak of the Congress humility before the President.

More or less balanced relation of both branches of government to their power up to the Second World War is explained by two factors.

Firstly, the number of American Armed Forces constituted from 1-2 thousand to 300 thousand for the previous time and from 1946, this number increased up to 1.8 million people per year. Here it is important not only the fact, that the number of Armed Forces increased by 6.6. times, but also the increase of provisions for its support [13, p. 229]. It is not worth concealing, that the increasing number of the Armed Forces and their constant status were approved by the Congress itself. In fact, the Congressmen handed over the multimillion army to the President and strengthened the positions of the President themselves. Whilst the President was the Commander-In-Chief only for the time of Army calling, he did not present a threat of violation the Congress's rights and powers; right now the Congressmen have made what their predecessors, the Constitution authors, were afraid of. Formally, now the President has the right, which would lead to the "tyranny". In 1789 Thomas Jefferson alerted about it in the letter to Madison [17, pp: 202]. In XX century this process was called "the Imperial Presidency by Shlesinger, Jr. [18].

Let us not forget, that the existence of such Army, in addition, scattered in military bases all over the world, the Cold War with the Soviet Union, participation in different regional conflicts conditioned such position of the Army of the USA and the President, that they were called up for "the USA active service" on a permanent basis. At that understanding of the problem, the President had a right to send troops abroad, not asking the agreement of the Congress.

Secondly, while the USA followed the policy of neutrality and followed the covenant of George Washington [17, p. 181], nobody was interested in the overseas prerogatives. However, after the USA started to take an active part in international relations and headed the democratic world in the fight with communism, the problem of overseas power came to the force.

There were formed two groups in the USA political elite: the followers of the strict construction of the Constitution and the followers of loose construction of the Constitution [19, p. 85]. The first assume that the national government can have only that power that is clearly mentioned in the Constitution. They consider that the theory of so-called "implied powers" is dangerous. The followers of loose construction, on the contrary, state, that for efficient functioning of the Presidential Administration and Congress, it is necessary to assume the existence of "implied powers", which result from the powers, listed in the Constitution.

The followers of the implied powers speak for that, if the President signs the treaties, appoints the ambassadors and receives the ministers from another countries, then it is expected, that he leads and guides the foreign policy. The followers of the strict construction note, that conclusion of treaties and appointment of ambassadors happen on "the advice and consent" of the Senate. What is "consent" in clear in both cases: the Senators should ratify a treaty by a two-thirds vote and approve the appointment of the diplomatic representatives. The situation with "consent" is slightly more difficult. The first President of the USA, wishing to follow the Constitution, when concluding a treaty, sent a request to the Senate, asking for their advice. When the Senate sent the consideration of this problem into the relevant committee, Washington revolted. After this incident, no one President of the USA did the similar formal request in advance [20, p. 31].

From that time, the Presidents are informally interested in the opinion of authoritative Senators, include the Senators into the treaty making delegation or just ignore their opinion, signing the executive agreements.

Signing of an executive agreement is not an anticonstitutional action, as there is said nothing about agreements and pacts in the Constitution. The only thing is exactly mentioned: for concluding a treaty the President should win the votes of two thirds of attending Senators. However, if to judge from the principle of the assumed powers, the Founding Fathers, writing into the Constitution a word "treaty", implied any agreement, made on the part of the United States with another states.
From 1789, the Senate rejected only 19 treaties. It is mainly practiced the amendments making, the treaty modification or postponing of their review. The Senate approved without changes 69% of treaties (944 treaties) from all presented for review [14, p. 424].

From 1945, there is observed a constant growth of the percent of executive agreements in relation to the ratified treaties. If from 1941 to 1945 there were made 15 treaties and 402 executive agreements, then for the period from 1945 to 1952 the number of concluded executive agreements increased up to 1371, the number of treaties increased up to 145 [21, p. 308].

Thus, we see, that for the period from 1945 to 1952 the executive power, in the person of the President, pressed the Congress in the sphere of international relations and the main instrument of infringement of the legislative body power are the executive agreements. Senator J. W. Fulbright complained: "Recently we reviewed the emergency agreement about the protection of stolen art objects. However, when we bring troops or enter into obligation before Spain, we resort to executive agreements" [22, pp: 312].

Another strike at the Congress power in the international sphere was made by the US Supreme Court, presided by the judge George Sutherland, decreeing, that the foreign policy is the prerogative of the Presidential power [23, pp: 94]. However, in 1952 the judge George Jackson specified the declaration of the judge Sutherland: "the President should act in foreign affairs without the pressure on the part of the Congress, but he should not come out against the Congress" [14, pp: 415].

In other words, both military and foreign policy powers are separated: "the President usually placed to suppose and the Congress is frequently placed to dispose" [24, pp: 171]. Besides, the Congress forms the foreign policy by means of control over the activity of executive power, hold hearings and investigations on important foreign policy issues, focusing public and Government attention on targeted problems.

However, it should be taken into consideration, that, although the President is the Commander-In-Chief and the representative of the nation abroad, both foreign and military policies constantly require direct finances, provided by the Congress. If the Congress has a desire to get back some powers, which are considered to be the implied powers by the Presidents, it can pass a corresponding law, to overcome the Presidential veto or to trim the budget of the governmental agencies Budget trimming is, in practice, cutting of powers of the executive authority: the powers are not withdrawn, but limited by the lack of funds.

In whole, the Congress and the President defend different interpretations of the Constitution and, as a rule, to their own advantage. The President considers that, as per the Constitution, he has a right to abide by the law, then, consequently, he has the whole executive power, to which the foreign policy belongs and the Congress has a power over the external trade and a right to declare a war. On the other hand, the Congress assumes, that the phrase "external trade" includes all aspects of relations with foreign states, as for the Founding Fathers the trade, but not the policy, was of the prime importance. The fact, that the Congress has a right to declare a war, from their point of view, points to the leading political status of this branch of government.

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REFERENCES