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THE DEFINITION AND SIGNIFICANCE OF THE
RUSSELL AMENDMENT AS ILLUSTRATED BY
THE B-70 CONTROVERSY OF 1962

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Thesis
D4585

THE DEFINITION AND SIGNIFICANCE OF THE RUSSELL AMENDMENT

AS ILLUSTRATED BY THE B-70 CONTROVERSY OF 1962

By

PETER T. DEUTERMANN

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DEUTERMANN, P.

PREFACE

One of the primary responsibilities of the national legislature is supervision of the executive branch of government. In the usual phrasing, Congress' supervisory role consists of questioning, reviewing and assessing, and modifying or rejecting policies of the Administration.¹ The proper limits, however, of legislative intervention in administrative affairs have long been a subject of debate.

A relatively recent manifestation of the continuing evolution of legislative procedures which bear on the responsibility mentioned above is the so-called Russell amendment to the Military Construction Authorization Act of 1959. This paper will investigate and evaluate the significance of the Russell amendment by means of an examination of the RS-70 controversy of 1961-1962. The RS-70 bomber controversy arose during the program authorization hearings before the House Committee on Armed Services.

The broad objective of this paper is to determine whether or not the Russell amendment significantly contributes to the effectiveness of the legislative process in the sphere of national security. The vehicle for analysis will be the RS-70 controversy, chosen because it represents the first important test of the procedural innovation created by the Russell amendment.

The influence of Congress in shaping national defense policy is substantial, but it is accomplished in a very complex manner, normally through the process of budgetary review. The Russell amendment altered this process, and

¹William J. Keefe, Morris S. Ogul, The American Legislative Process (Englewood Cliffs, N.J.: Prentice Hall, Inc., 2d ed; 1968) p. 285.

in so doing altered the balance of power within the committee structures of both House and Senate. To properly analyze the effect of this amendment, as illustrated in the RS-70 issue, a substantial number of pertinent factors and influences must be reviewed to set the political and institutional scene for the events of that time.

In similar fashion, the RS-70 issue itself was an extremely complex matter, involving all the many ramifications of the military research and development programs, the question of roles and missions for the three services, and larger strategic questions arising out of the cold war between the United States and the Soviet Union. Here again, a good deal of background must be filled in to place the RS-70 issue in its proper military and political perspective.

This paper will attempt to outline broadly Congress' role in national defense policy formulation, with emphasis on the post World War II period. This discussion will be followed by a similar review of the origins of the Russell amendment and the RS-70 bomber controversy.

With this background established, the series of events which proposed and finally settled the RS-70 bomber question will be described, with emphasis on the hearings and proceedings of the Spring of 1962. Following this narrative section will be an analysis of the elements of the RS-70 issue, and the effects of the Russell amendment on the legislative process as it concerns national defense.

INTRODUCTION

Section Eight of Article One of the United States Constitution enumerates in eighteen clauses a series of specific subjects over which power is expressly granted to the Congress.² Three of these subsections pertain to the armed forces of the United States:

12. to raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;
13. to provide and maintain a navy;
14. to make rules for the government and regulation of the land and naval forces;³

The writers of the Constitution established a separation of powers by providing for a Congress and a President on the same legal plane, then blurred the separation by giving each certain rights to check or influence the activities of the other. The correct interpretation of this doctrine is that the same hands must never exercise the whole power of more than one department.⁴

Section Two of Article Two states, in part, that

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into active service of the United States.⁵

²George B. Galloway, The Legislative Process in Congress, p. 27.

³William R. Barnes, The Constitution of the United States, p. 41.

⁴Joseph P. Harris, Congressional Control of Administration, p. 3.

⁵William R. Barnes, op. cit., p. 45.

The division of labor with regard to the armed forces is thereby clearly spelled out. Congress' function is to raise an army and a navy, and to pay for them, by means of its associated powers of taxation and appropriation. The President, on the other hand, commands the forces which Congress creates.

While the Constitution thus set in motion the establishment of armed forces in the United States, it has remained for succeeding generations of government to make the system work. Historically, the major problem has been one of achieving the balance required to maintain civilian control of the armed forces, in accordance with the Constitution, and yet encourage the development and utilization of military expertise and proficiency.⁶

The three military services have, over the years, grown in political and administrative significance. During the first years of the American Republic, all the military functions were centered in one department, the War Department. There were a few frigates in the service of the military, but these were controlled through this one department until 1798, when Congress passed legislation establishing the Navy Department.⁷ The National Security Act of 1947 further expanded the organizations of the Armed Forces by creating a department of the Air Force. This act was amended in 1949 to create one single department of Defense, which incorporated all three services.

S. P. Huntington has advanced the theory that the key to understanding the historical question of control of the military establishment lies in that word "establishment." Huntington argues that the framers of the Constitution never

⁶Clark R. Mollenhoff, The Pentagon, p. 30.

⁷Ibid, p. 31.

foresaw the rise of a professional, standing military structure, and thus provided no procedure for effective civilian control and direction of such an establishment.⁸ The only workable solution was to create executive departments, as mentioned above, under the control of the President, using the authority of the Commander in Chief clause. Congress would then be able, at least theoretically, to exercise its control function through the power of the appropriations process.

In 1789 a reasonable expectation existed that Congress could effectively exercise its military powers without much outside guidance or assistance. Through its own investigations, it could be expected to determine the kinds of armed forces required for the nation's defenses and to implement the President's foreign policies.⁹ The advances of science, modern weapons, and America's place in the global power structure has rendered the congressional supervision of the eighteenth century obsolete in terms of its ability to deal with the military issues of contemporary times. These same advances, however, have not in any way diminished Congress' responsibilities in this important area.

Large, well organized, and technically competent bureaucratic structures have been required to fulfill the demands of military policy making and administration. The dominant feature of a bureaucracy is its executive arrangements of decision making, a feature which does not lend itself well to control through a legislative process.¹⁰ Congress has had to come to terms with executive leadership in military affairs, and has done so by channeling its

⁸Samuel P. Huntington, "Civilian Control and the Constitution," American Political Science Review, Vol. XXXIX (February, 1945); pp. 1-11.

⁹Edward A. Kolodziej, The Uncommon Defense and Congress, 1945-1963, p. 436.

¹⁰Ibid, p. 435.

supervisory efforts into the process of appropriations review, which has been the procedural responsibility of the Appropriations Committees of both Houses.

While the Constitution vested supreme lawmaking power in the legislative branch as a whole, it did not provide suitable procedural arrangements for the management of this power. In practice, therefore, legislative committees have come to occupy positions of great and crucial importance in both Houses of Congress. The complexity of legislation, the sheer volume of bills, and the fact that committees facilitate negotiation in Congress have all contributed to the prominence of committees.¹¹

The Appropriations Committees of Congress have become, over the years, the most influential bodies within the committee system, because money is the prime mover of the entire legislative process. But before actual appropriations of funds can occur, other committees in each House must enact legislation which authorizes particular programs and activities of the executive departments. Thus, the overall appropriations process has a dual nature, because congressional action must occur in two steps: first, in the enactment of the basic legislation ordering or permitting the government to undertake a specific program, and, second, in the annual making of an appropriation or other obligational authority to fund that program.¹²

In effect, then, there are two separate structures of power existing in parallel within each House. The division of labor between authorization and appropriation procedures has the potential for tension within the congressional committee system,¹³ primarily because, although the substantive committees may

¹¹W. J. Keefe, M.S. Ogul, op. cit., p. 163.

¹²George B. Galloway, op. cit., p. 137

¹³John S. Saloma, III, The Responsible Use of Power, p. 16.

authorize a program, the appropriations groups are under no constitutional obligation to complete the process and fund that program,¹⁴ a fact which serves to reinforce the political power of the appropriations committees, particularly, in respect to military affairs, in the House of Representatives.

Prior to 1946, the legislative committees which considered the annual military budget requests were the Naval Affairs Committee, for the Navy, and the Military Affairs Committee, for the Army and Army Air Forces. Between the 79th and 80th Congresses, the Legislative Reorganization Act of 1946 took effect, which served to substantially streamline the committee structure in both the House and Senate.

Thirty-three committees in the Senate were consolidated into fifteen, and in the House, forty-eight committees were regrouped into nineteen new committees. In each House, the Naval Affairs and Military Affairs committees were consolidated into a single committee called the Armed Services Committee.¹⁵ In relation to the Appropriations Committee, the Armed Services Committee became the substantive committee for military affairs. The Armed Services Committee's function was to authorize the broad programs for the services, while the subcommittees on defense of the Appropriations Committees legislated the dollars needed to carry out the military programs authorized.¹⁶

While the 1946 reorganization of congressional committees represented an overall streamlining of the committee structure, the consolidation of the military committees was also due to the evolving centralization that had taken place

¹⁴Aaron Wildavsky, The Politics of the Budgetary Process, p. 187.

¹⁵George B. Galloway, op. cit., p. 176.

¹⁶Arthur Smithies, The Budgetary Process in the United States, p. 132.

within the military establishment. The 1946 congressional reorganization anticipated by one year the reorganization of the armed forces into three departments, which was followed two years later by a consolidation of those three departments into the single Department of Defense.

The increasing size and centralization of the military establishment, combined with expanding American international responsibilities arising out of the cold war with the Soviet Union, compounded Congress' problem of fulfilling its constitutional responsibilities with regard to defense matters. Military budgets in the early fifties began to reflect the era of increasing international tensions, and the task of effective cooperation between Congress and the Executive Branch became an increasingly important factor in the outcome of the conflict with Russia. A sense of bi-partisanship developed in Congress during this era which tended to put national security beyond the realm of normal partisan politics.

There were several factors which bore on the changing relationship between Congress and the Executive Branch. The tension between the United States and the Soviet Union was not a declared war, but something between a hot war and a cold war. The United States, because of its predominant military-economic position after World War II, was the acknowledged leader of the free world. A third factor was the increasing cost of America's international commitments, which carried a price tag in men and material heavy enough to have a substantial effect on the domestic economy. A fourth factor was the growing complexity of international problems which made congressional-executive teamwork a difficult matter. And, finally, there was the element of time in the nuclear age of push-button warfare and international crises

which always had the potential for escalating into global conflict.¹⁷

The Korean War of 1950 was typical of the suddenness with which a major conflict could erupt, and symptomatic as well of the changing nature of international conflict. It was an undeclared war, and the United States participated in hostilities under the flag of the United Nations.

Paralleling the rising international tensions in the fifties was the technical revolution in the fields of military technology and weapons production. Strategic concepts underwent profound change with the advent of intercontinental bomber, and later, missile systems. The new technology, however, came with a high price tag. The military budget rose from a level of \$13.5 billion in 1950 to nearly \$50 billion in 1952. The Korean War accounted for about half of this rise, through supplemental appropriations passed for the war, but the rising costs of military equipment were dramatic.¹⁸

The shadow of a New Look in defense spending was cast over the Pentagon by the election of General Eisenhower in 1952. Candidate Eisenhower had promised the nation economy of operation, a more effective military posture, and a substantial cut in the defense budget. The armistice in Korea, coming in July of 1953, permitted the new President to make good on his promises of a New Look in defense posture, and, over the next two years, the Eisenhower administration cut back the Defense budget to the \$30 billion level.¹⁹

¹⁷Daniel S. Cheever, H. Field Haviland, Jr., American Foreign Policy and the Separation of Powers, p. 3.

¹⁸Clark R. Mollenhoff, op. cit., p. 144.

¹⁹Ibid., p. 167.

The spending levels of the Eisenhower administration reflected a change in overall defense strategy, from that of emphasizing conventional warfare capability to one which relied primarily on a doctrine of massive retaliation with nuclear weapons as a posture of deterrence. The emphasis of the New Look was on air power and a drastically reduced army man-power level.²⁰ The thinking was that nuclear weapons and long-range delivery systems made conventional armies obsolete. In the main, Congress concurred with the policies of the New Look in its early years.

The principal concern of the New Look policy seemed to be the dollar ceiling on the annual Defense budget. President Eisenhower had promised to trim the Defense budget, and he did so. His administration cut the Defense budget by 10 percent for fiscal 1954, by 16 percent for fiscal 1955, and by 13 percent for fiscal 1956, as revealed in a Senate hearing conducted in 1956 on the subject of strategic air power.²¹ The Soviet Union, in the meanwhile, had shown no signs of letting up in its drive to achieve military parity with the United States in this same time period. At a time when the United States was relying upon a doctrine of massive retaliation to deter the Soviets from any major war, the Soviets were moving quickly to negate that doctrine by creating a more powerful nuclear force than the United States had.

A factor which was to begin to reverse the trend of the Eisenhower administration's defense policies was the changing political alignment in Congress. When Eisenhower was elected, the Republican party was in the majority in both Houses of Congress. Following the 1954 congressional elections, the Democratic

²⁰Ibid., p. 198.

²¹Ibid., p. 199.

party controlled Congress, and the Democrats were to continue in majority control for the remainder of the Eisenhower years. The early and solid acceptance of the New Look defense policy in Congress changed slowly throughout the six-year period of Democratic party control to a breakup of the congressional consensus which had approved that doctrine.²² Congressional influence was exercised ultimately through the efforts of an increasing number of legislators who strove to understand and deal with the economic and fiscal policies underlying the nation's military programs. Budgetary limitations established without reference to military requirements, and military requirements generated without reference to the budgetary process were acknowledged to have been the most significant hindrances to the development of realistic strategic military policies and supporting programs in the fifties.²³

The important thing to be noted about the decade of the fifties was that it was a decade of very rapid change which involved the whole spectrum of military affairs. The cold war with the Soviet Union, punctuated by the Korean conflict, had put severe and continuing pressure on the United States to assume a position of global leadership that necessarily had to be backed up by global military power. Foreign policy and military policy became inseparable as never before in their formulation, and the urgency of the times accentuated the executive nature of national policy making.

²²Edward A. Kolodziej, op. cit., p. 201.

²³Ervin E. White, "A Legislative Prelude to Flexible Response," (Unpublished paper, University of Washington, 1968) p. 85.

The necessity for keeping pace with the rapid advance of military technology, and the attendant costs of that technology, had its greatest impact in Congress on the Appropriations committees, for the defense sub-committees of Appropriations were faced with the annual task of reviewing the increasingly larger defense budget requests. Procurement of major weapons systems became the most substantial part of the annual defense budget, for two reasons. For Congress, the procurement package represented the largest dollar portion of the military budget. For the individual services, the procurement of weapons systems became the major vehicle by which individual services could compete for roles in the nuclear age.

The power of the Appropriations committees to make budgetary decisions has been in a sense dependent upon the ability of the members to keep the system going by meeting the needs of other congressmen, who tend to listen to the expert committees, particularly in the case of the very complex defense budget requests. The budget review is a very specialized business, which means that sub-committees break up the annual federal budget and review it according to their subject specialty.²⁴ The review which the defense sub-committees of the general Appropriations Committee gave the annual defense budget was usually quite thorough.

On the other hand, the roles of the Armed Services committees in Congress had been largely relegated to the background of the legislative process in the years after World War II. Legislative authorizations for the procurement of aircraft, missiles, and naval vessels, were cast in such vague legislative terms

²⁴Aaron Wildavsky, op. cit., p. 138.

and the ceilings on their acquisitions were set so high that they provided little or no guidance for the Appropriations committees.²⁵

The armed services committees did maintain their prerogatives over military pay and personnel, and military construction, while review responsibility for military assistance programs was granted to the foreign affairs committees. The armed services committees gradually discovered, however, that their passage of pay and personnel legislation had little direct effect on defense policy and on the nation's strategic posture, because it was military procurement, i.e., the hardware authorizations, which determined what the nation's military strategy could be.²⁶ The only place that that procurement was really examined in the defense subcommittees of the appropriations committees, in the choice of hugely expensive weapons systems.²⁷

The size and technical complexity of weapons systems and force level funding requests in the annual defense budget were a good deal more than the average congressman could grasp in any comprehensive sense. The defense budgets were constructed with more regard to departmental convenience than for the need to inform congressmen sufficiently to enable them to make adequate policy decisions.²⁸ This was not an intentional failing, but rather a consequence of the fact that a budget is in essence an executive planning device.

²⁵ Edward A. Kolodziej, op. cit., p. 366.

²⁶ Ibid., p. 368.

²⁷ Aaron Wildavsky, op. cit., p. 138.

²⁸ Arthur Smithies, The Budgetary Process in the United States, p. 265.

The salient characteristic of the congressional process in reviewing defense budgets was its highly decentralized nature. No one body in either House of Congress had as its sole duty the consideration and formulation of the structure of the armed forces of the United States, which process is implied in the Constitution. Military budgets were processed through Congress in such a way that a comprehensive picture of national defense policies could not be derived at any one point in the process.²⁹

And yet while the congressional process after World War II was essentially a decentralized process, the organization whose budgets Congress was reviewing had become increasingly centralized under the office of the Secretary of Defense. The clarification and strengthening of the authority of the Secretary of Defense over the entire defense structure had been the basic theme of development in the defense organization since 1947. The process had been evolutionary, and sought to combine centralization of authority in the Secretary of Defense with substantial retention of traditional service structures in support of combatant forces.³⁰ Defense organizational changes continued after 1947, and were supplemented and even overshadowed by improved management procedures.

Members of Congress were aware of the seeming imbalance in policy initiative towards the end of the fifties. Some indication of the thinking in Congress is evident in the report of the Senate Committee on Armed Services on the Defense Reorganization Act of 1958. The report recognized the central importance of military power in relation to the contemporary international

²⁹Ibid., p. 232.

³⁰C. W. Borklund, The Department of Defense, p. 100.

scene, and declared that if Congress were to exercise its constitutional responsibility, it must gain a more meaningful measure of control over the structure of the combatant forces it would create.³¹

In the Senate, moreover, other factors were at work which presaged a greater involvement of the Armed Services Committee in defense affairs. It had been apparent for several years that changes in major weapons programs--known as reprogramming--were a source of considerable congressional irritation. Senators Sparkman and Stennis in particular had criticized the Department of Defense for suddenly reducing (or cancelling altogether) programs for which only months earlier high military witnesses had pleaded hotly in the appropriation hearings. No senator was against reprogramming per se, but in many instances basic alterations had been made without any prior notification to Congress.³²

On the House side, the Armed Services Committee, chaired by the very senior Representative Carl Vinson, had seen most of their former pre-eminence eroded, seemingly by default, to the appropriations subcommittees on defense matters.³³ As the national defense budget came to represent an increasingly larger share of the total national budget, its political significance rose in proportion. The familiar tension between the Appropriations Committee and any substantive committee was reinforced in the case of the Armed Services Committee.

³¹U.S. Congress, Senate, The Defense Reorganization Act of 1958, S. Rept. 1765, 85th Cong., 2d sess., 1958, p. 40.

³²B. K. Gordon, "The Military Budget: Congressional Phase," in Journal of Politics, Vol. XXIII (November, 1961) pp. 690-711.

³³Ibid., p. 691.

The special privileges which accrued to the Committee on Appropriations, the very small size of its subcommittees, its closed-door and off-the-record method of holding hearings, and finally, the sheer power of its control over funds, all accentuated the jealousy with which substantive committees regarded the appropriations group in the House.³⁴

Section 412(b) of the Military Construction Authorization Act for fiscal 1960 significantly modified the arrangement whereby only the defense subcommittees of the Appropriations Committee fully reviewed the annual military budget requests. It introduced the Armed Services committees once more into the center of the annual defense budgeting and programming process.³⁵

This section of the Construction Authorization Act became known as the Russell Amendment, since it was introduced by Senator Richard Russell, then chairman of the Senate Armed Services Committee. The section directed that

No funds may be appropriated after December 31, 1960 to or for the use of any armed force of the United States for the procurement of aircraft, missiles, or naval vessels unless the appropriation of such funds has been authorized by legislation enacted after such date.³⁶

Senator Russell was solicitous about the apparent decline in American military strength in the late fifties. He was aware also of the difficulties Congress faced when it attempted to improve the nation's defense posture, without the active support of the President. He became convinced that the annual Senate military posture hearings did not probe deeply enough into the planning,

³⁴ Ibid, p. 708.

³⁵ Edward A. Lolodziej, op. cit., p. 379.

³⁶ Raymond H. Dawson, "Congressional Innovation and Intervention in Defense Policy: Authorization of Weapons Systems," American Political Science Review, LVI, (1962), p. 42.

operations, and costs of the military establishment. Just as importantly, he realized that, since they resulted in no specific legislation, the posture briefings were discounted in importance by committee members and other legislators. Section 412(b) was an obvious solution.³⁷

Chairman Vinson of the House Armed Services Committee was initially opposed to the Russell Amendment, because of his doubts that his committee and its staff would be able to discharge the additional responsibilities implicit in Section 412(b). In the conference committee on the Military Construction Authorization Act, however, Vinson acceded to pressure from both the Senate Armed Services Committee and members of his own Armed Services Committee, and agreed to support the amendment. The Russell Amendment served to quicken the awareness of many House members to the opportunity for assertion of committee power and responsibility.³⁸

Opposition to the new procedure was centered in the Pentagon. The Russell Amendment meant that Pentagon officials would now have to present their procurement programs twice, once before the Armed Services committees, and again to the defense subcommittees of the Appropriations committees. Pentagon officials claimed that there would be serious delays imposed by the new procedure, particularly if there was any disagreement between the two committees of both House and Senate.

It must be noted that this procedure was not something that was totally new in Congress, since all departments must do essentially the same thing, i.e.,

³⁷Edward A. Kolodziej, op. cit., p. 379.

³⁸Ibid, p. 380.

present testimony to both a substantive and an appropriations committee in each House of Congress. In fact, however, it was something new for defense, because the Defense Department had been accustomed to making a totally different presentation before the Armed Services Committees.

Prior to the Russell Amendment, the Defense Department appeared before the Armed Services Committees in what was called the Military Posture Hearings. At these hearings, a sort of military state of the union presentation was given, along with the department's pay and personnel budget requests. The subject of major weapons procurement was reserved for testimony before the Appropriations groups, on the theory that these were more purely money requests than anything else. Thus while the department was already going through the same process as all other departments, i.e., a substantive committee for authorization, and an appropriations committee for funds, in fact the major weapons systems were going only to appropriations, bypassing the armed services committees. This was being done mostly as a result of a procedural agreement between the Armed Services Committees and the Defense Department. The net result of the Russell Amendment was, therefore, that the lengthy and detailed weapons procurement briefings would now have to go through the Armed Services Committee as well as the Appropriations Committee, which was in fact what had been legally required all along of all other executive departments.

Another factor mentioned was that the new procedure would necessitate that internal differences between the services regarding weapons programs would now have to be more intensively ironed out before the congressional stage of the budget was reached, which implied a further centralization of power under the Secretary of Defense. Some members of Congress were apprehensive about the prospect. Congressman H. Sheppard, senior member of the House Appropriations Defense Sub-committee, regarded that possibility with great trepidation. The

ranking member of the House Armed Services Committee, Congressman Paul Kilday, commented that one of the basic reasons for the new procedure was to get better planning in the Executive Branch.³⁹ The corollary to "better planning" was the strong possibility that any military disagreements with the civilian management in the Pentagon would be kept from Congress, and congressmen wanted to hear both sides of any arguments over procurement.

An Assistant Secretary of Defense noted, in August, 1960, that the committee staffs of both Armed Services Committees were inexperienced in preparing the type of questions which would be able to penetrate well-constructed Defense Department presentations. It was also noted that Pentagon procurement officers would have a difficult time in contract negotiation if Congress had already tied dollars to programs.⁴⁰

The Russell Amendment was expected to open the way for an expansion of the congressional role in military policy in three ways. It would supposedly strengthen the access of Congress to the process of policy formulation. It would provide a utility of focus for the committees on the major programs in the annual defense budget, and would reveal the relative allocation of resources to preparedness for limited and general war, the relative utility of varying types of strategies of deterrence, and the proper mix of roles and missions of the three services relative to these various policy objectives. And finally, the authorization procedure was expected to create an expanded

³⁹B. K. Gordon, op. cit., p. 707.

⁴⁰Ibid., p. 710.

base of knowledge in Congress for critical analysis of major defense issues.⁴¹

The election of John F. Kennedy in 1960 and the inauguration of his Democratic Administration in 1961 marked a turning point in the development of American strategic military doctrine. For the first time in six years, the same party controlled in both the White House and Congress. After the tumultuous decade of the fifties, the general consensus in Congress was that American military might had slipped badly under the Eisenhower Administration, and that it was time to do something about it. The campaign in 1960 had developed this issue clearly, and with the Kennedy Administration there began a revitalization of American armed forces.

The Russell Amendment went into effect in 1961, and this coincided with the beginning of the Kennedy Administration. Congressional innovation and intervention in defense policy was to collide head-on with executive innovation in defense management in the fall of 1961.

The Kennedy Administration brought Robert S. McNamara to the Department of Defense as its new chief executive officer. Secretary McNamara was convinced that the nation had to improve its strategic nuclear forces, even as it altered the emphasis of reliance for national security in favor of more conventional forces. McNamara's analysis had concluded that strategic nuclear forces were no longer a credible deterrent to the broad range of aggression, if indeed they ever had been in the past. Additionally, he decided that nuclear weapons were not perfect substitutes for conventional forces in the

⁴¹Raymond H. Dawson, op. cit., p. 57.

types of conflicts which were most likely to involve the United States in the sixties.⁴²

The major effort initiated in the Pentagon by the new Secretary of Defense, however, was the drive to improve the efficiency and effectiveness of Defense management. This effort was divided into two parts: the first a series of management reforms, covered by a formal five-year cost reduction plan set up in July, 1962. The objective of this plan was to save money by introducing more efficient methods of doing things. The second and more important part of the overall effort was to increase military effectiveness.

McNamara discovered that the three military services had been establishing their procurement requirements independently of each other, and that the resulting requirements bore almost no relation to each other in terms of preparedness for war. The new Secretary introduced the planning-programming-budgeting system into the Defense Department. The program budget proposed to group together for planning purposes military units which would have to fight together in the event of a major war, i.e., strategic forces with other strategic forces, and general purpose forces with other conventional forces, regardless of service origin. In this way it was hoped that weapons procurement could be examined in the light of what the new weapons system would contribute to its unique functional area, and thus could be better evaluated in terms which had some common denominator, since adding a weapon to the inventory did not

⁴²Robert S. McNamara, The Essence of Security, p. 68.

necessarily add to national security in proportion to what it might cost to develop and produce that weapon.⁴³

The introduction of the PPB system in the Defense Department paralleled the implementation of the Russell Amendment. Both procedures addressed themselves to weapons systems procurement. McNamara felt that the program budget would permit top management in the Defense Department as well as in Congress to focus their attention on tasks and missions related to national objectives, rather than on the tasks and missions of a particular service.

The Russell Amendment was implemented procedurally in 1961, with consideration of the FY 1962 budget. It was agreed between the Defense Department and the Armed Services Committees that the annual authorization bill would be presented with all requests for obligational authority tabulated under headings such as Navy aircraft, Air Force missiles, Army missiles, etc., and that program authorizations would be made in lump sums. The Armed Services Committees would receive in hearings essentially the same information which the Defense Sub-committees of the Appropriations Committees did, with respect to procurement programs.

The Russell Amendment was supposed to return the Armed Services Committees to the mainstream of national defense policy making. The question which arose almost immediately was how much influence would the committees be able to bring to bear in passing on the annual defense budget requests. The first significant test of the limits of the Russell Amendment came in consideration of the FY 1962 Defense budget requests, and, ironically, the roles in the dispute which arose came to be reversed. The dispute centered on an Air Force Program, the B-70

⁴³Ibid., p. 91.

supersonic bomber, which the new Secretary of Defense had decided not to procure. The House Armed Services Committee thought otherwise, and decided to take issue with the Secretary of Defense, and to use the procedural avenue opened up by the Russell Amendment to do so.

THE B-70 CONTROVERSY

Before considering the B-70 controversy in detail, a small digression is necessary. The B-70 bomber was, for most of its existence, involved in the process of military research and development, popularly known as R & D. Military R & D is a very complicated business, with manifold problems for both policy makers and politicians. There is the basic problem of making technological progress, and doing so before one's enemy does. There is the problem of incorporating advances in basic technology into operational hardware. And finally, there is the most vexing problem of determining how much of the nation's resources should be allocated to R & D, whether military or business oriented, due to the inherent uncertainties in any research program.

There are four broad classifications of military R & D. The first category is weapons system development, which is directed toward the fabrication for testing of prototypes for operational weapons. The term weapons system in this context is used in a narrower sense than in systems analysis, and it includes the major equipment, such as a bomber aircraft, and such auxiliary equipment as power plants, bombing navigation systems, other electronic equipment, and armament, but would not necessarily include an operational concept, or base system, or personnel training program.

Component development is the more or less independent development of items of military hardware, which are not in themselves complete weapons systems. Services can and do spend money productively developing engines for aircraft, guidance systems for missiles, gyroscopes for guidance systems, and so on, without knowing precisely the type or model of the major equipment of which the component will eventually be a part.

In exploratory development, or applied research, the objective is to advance the state of the technological art rather than obtaining immediately operational hardware. This may involve a laboratory experiment, a wind tunnel test, or the construction of a working model, depending upon the nature of the idea.

Basic research is the deliberate search for knowledge. The military services, as well as other government agencies, support a good deal of basic research, such as studies in basic physics, aerodynamics, and some branches of applied mathematics. Basic research is typically the least expensive type of research and development, and the least structured or directed.⁴⁴

Research and development is characterized by uncertainty and unpredictability at every stage in its search for knowledge, and flexibility in the various stages of a research and development program is essential.⁴⁵ The decision to move into the weapons development stage represents a fairly substantial commitment to the program under development. Should the particular system fail to meet performance specifications when the prototype is tested, the government stands to sustain a considerable loss, depending upon the financial magnitude of the program. Thus the policy decision to stage a program into weapons development is a very critical step, which presupposes that enough research has been done to assure technical feasibility, and that the contractor can indeed fulfill his contract under the budgeted costs and price.

⁴⁴ Charles Hitch, Roland McKean, The Economics of Defense in the Nuclear Age, pp. 245-246.

⁴⁵ B. H. Klein, W. H. Meckling, E. G. Mesthene, Military Research and Development Policies (RAND R-333), p. 3.

A factor which complicates research and development decisions is the factor of time. Development decisions on bombers which are to be operational by 1970 must be made in 1960, which makes such decisions very vulnerable to the technical uncertainties mentioned earlier.⁴⁶ Military hardware which is developing at the frontier of technical know-how takes literally years to perfect and produce. A single holdup in any one part of an entire weapons system can initiate a cascade of delays throughout the rest of the project, thus further aggravating the time problem.

As all military R & D projects are conducted within budgetary restraints, the costs of developing a weapons system are probably the most important consideration next to achieving the development objectives themselves. The method by which the armed forces have contracted with industry to get development projects under way, however, has not always been conducive to keeping costs to a minimum.

Throughout the fifties, there was a presumption that competitive forces, working through the price and market mechanism, would provide the same spur to efficiency and low cost operation that they did in the private economy. But only a rather small portion of service purchases actually were made on the basis of truly competitive bidding, especially in the late fifties. The expensive items, such as major equipment like aircraft, submarines, and tanks and their expensive major components could be produced by only a few companies, and their production costs were seldom accurately estimated in advance. Moreover, frequent and extensive modifications of the original design were the rule rather than the exception both in development and in production. In

⁴⁶Charles Hitch, Roland McKean, op. cit., p. 264.

these circumstances, negotiated contracts of the cost-plus type were widely used.⁴⁷

Rigid government controls on the development process often went so far as to specify not only what but how and by whom all the work would be done. There was little incentive to produce efficiently and cheaply when all allowable costs were reimbursed and allowed profits were fixed in advance. There was little scope for business initiative when firms were rigidly controlled in the name of preventing waste or fraud. These factors led to experimentation with the so-called incentive contracts, which permitted the contractor to keep some percentage of any cost savings in the development work, based on some previously arrived at figure or cost estimate.⁴⁸ The basic problem remained, however, to compute the overall program cost estimate, which the inherent uncertainties of R & D made extremely difficult. The ultimate objective of any contractor was a production contract for the final weapons system, which gave that contractor a real incentive to minimize his cost estimates in order to secure that final production contract.

The costs of an entire weapons system program include a variety of cost components: development cost, procurement cost, installation and training costs, and attrition and operating costs. To make a realistic estimate of the total cost of a program, each of these components must be either computed or estimated. To make an optimal choice between two weapons systems which will achieve essentially the same military objective, the total costs must be weighed against the expected return or additional military security to be gained.

⁴⁸Ibid., p. 231.

At the time of the B-70 controversy, America's strategic forces consisted of a mix of medium and long-range manned bombers (B-47, B-52, and B-58), and a growing number of intercontinental ballistic missiles. In addition there was the Navy's attack carrier striking force, deployed around the world. The B-70 bomber was to be a follow-on aircraft for the Air Force Strategic Air Command when the B-52 and B-58 forces had to be retired due to age.

Actual development work was begun on the B-70 aircraft in October, 1954, when the Air Force published a general operational requirement for an "intercontinental bombardment system piloted bomber," to join the operational inventory in the time frame 1965-1975.⁴⁹ In 1954, the aircraft was called the "chemical bomber," because its performance parameters envisioned the use of exotic chemical fuels instead of hydrocarbon fuels then in existence.

The chemical bomber was to be a giant aircraft, weighing 250 tons and capable of speeds in excess of 2200 miles per hour. It was designed to operate at the very fringe of the earth's atmosphere, and to carry nuclear loads over intercontinental distances. It was popularly dubbed the "manned missile."⁵⁰

Such flight parameters presented formidable technical problems. Very little was known about flight at such velocities and in a partial vacuum. Metallurgic solutions to the problems of aerodynamic loading and heating which would be experienced had yet to be found when the aircraft was initially conceived. The fuel for the B-70 had yet to be invented, and there was a good

⁴⁹U.S. Congress, House, United States Defense Policies in 1962, H. Doc. 502, 87th Cong., 1st Sess., 1963, p. 94.

⁵⁰Edward Rees, The Manned Missile: the Story of the B-70, p. 12.

deal of uncertainty that this aircraft could be built at all. The only thing that was certain about the aircraft was that it would be the most expensive bomber ever produced by anybody. The North American Aviation Company was named as prime contractor for the major system, and the aircraft was officially designated as the B-70 bomber.⁵¹

In 1960, the Eisenhower Administration decided to upgrade the project to the weapons development stage. Appropriate funding was requested to produce some operational prototypes for further testing. The B-70 remained at the weapons development level for only one year, however, due to the change in administrations which took place in 1961.

President Kennedy had given certain instructions to his new Secretary of Defense, which included a thorough review of all current and projected plans and projects within the Department of Defense. The President mentioned these instructions in his State of the Union address, stating that

We are moving into a period of uncertain risk and great commitment in which both military and diplomatic possibilities require a free world force so powerful as to make any aggression clearly futile...

I have therefore instructed the Secretary of Defense to re-appraise our entire defense strategy--our ability to fulfill our commitments--the effectiveness, vulnerability and dispersal of our strategic bases, forces and warning systems--the efficiency and economy of our operation and organization--the elimination of obsolete bases and installations--and the adequacy, modernization, and mobility of our present conventional and nuclear forces and weapons systems in the light of future and present dangers.⁵²

⁵¹Ibid., p. 13.

⁵²John F. Kennedy, State of the Union Address, January 30, 1961.

Secretary McNamara had received two amplifying directives from the President regarding the broad direction of the Administration in defense affairs. He was told to develop the force structure necessary to the nation's military requirements without regard to arbitrary or predetermined budget ceilings.⁵³ The second was, having done that, to procure that force structure at the least possible cost.⁵⁴

McNamara's broad criterion for accepting or rejecting a new major weapons system was that the proposed system would really have to add something to the nation's security. The B-70 bomber system failed to meet this basic requirement, primarily because it added little in proportion to its great cost, which was projected as at least ten billions for development, procurement, and operations of a modest force of the giant bombers.⁵⁵ As McNamara saw it, the B-70 was just another bomber, subject to all the vulnerabilities of an aircraft and having none of the advantages of an intercontinental ballistic missile, which could accomplish the same military mission.

The decision was made to downgrade the B-70 program from weapons system development to a prototype research level. Budget requests for continuation of the program were reduced correspondingly. When the President presented his revised budget estimates to Congress in March, 1961, he described briefly some of the technical uncertainties surrounding the project, and amended his

⁵³In contrast to the Eisenhower policy of setting firm budgetary ceilings on defense spending, and then getting what defense they could from that amount of money.

⁵⁴W. W. Kaufman, The McNamara Strategy, p. 48.

⁵⁵R. S. McNamara, The Essence of Security, p. 92.

funding requests for the B-70, cutting the figure from \$358 million to \$220 million.⁵⁶

The appropriations bill for FY 1962 was approved by Congress early in August, 1961, and it carried increases over administration funding requests of \$180 million for further development of the B-70 program.⁵⁷ Congress evidently believed that the manned bomber program was still very important, even though the Administration was more interested in transitioning the nation's force structure to ICBM's in place of bombers.⁵⁸

In October, 1961, Secretary McNamara announced that he would not spend the additional funds voted by Congress for additional bombers or for upgrading of the development of the B-70 weapons system. He listed three main objections, the first being that more bombers would not add to national security in proportion to their costs. McNamara further objected to bombers because they presented a soft target for ICBM's, and thus would require an early and forewarned launch. And, finally, he asserted that the B-70 in particular was much too expensive a program to be continued.⁵⁹

The Defense Department submitted a budget request of \$170 million for the continued development of a prototype B-70 to the House Committee on Armed

⁵⁶U.S. Congress, House, United States Defense Policies in 1961, H. Doc. 123, 87th Cong., 2nd Sess., 1962; p. 11.

⁵⁷U.S. Congress, Senate, Committee on Appropriations, Report, Department of Defense Appropriations for Fiscal Year 1962, S. Rept. 653, 87th Cong., 1st Sess., 1961; p. 7.

⁵⁸Edward A. Kolodziej, op. cit., p. 404.

⁵⁹U.S. Congress, House, Committee on Armed Services, Hearings, Military Posture, 87th Cong., 2nd Sess., 1962, p.3174.

Services in February, 1962, for FY 1963. The Air Force had changed the designation of the aircraft from B-70 to RS-70 to describe its expanded role as a reconnaissance-strike bomber. During the hearings before the House Armed Services Committee, the Secretary of the Air Force and the Air Force Chief of Staff urged that the prototype program be expanded to build a total of six RS-70 aircraft. Their cost estimates for building six aircraft were on the order of \$1.3 billion.⁶⁰ Their testimony tended to contradict that of their superior, Secretary McNamara, and ensured a good deal of misgivings in the committee as to what indeed the Defense Department had in mind for this project.

The House Committee Report was released in March, 1962. The report revealed that the committee had added \$320 million to the \$170 million Defense requested for the RS-70 program, and that the committee was directing the Secretary of the Air Force to spend the entirety of the authorized funds on the RS-70 program.⁶¹

The report of the committee stated

The Secretary of the Air Force is directed to utilize authorization in an amount not less than \$491 million during fiscal 1963 to proceed with production planning and long leadtime procurement for an RS-70 weapons system.

As if to ensure that there would be no ambiguity in the interpretation of their report, the committee went on to say

⁶⁰Congressional Quarterly Digest, 1962; p. 417.

⁶¹U.S. Congress, House, Committee on Armed Services, Report, Authorizing Appropriations for Aircraft, Missiles, and Naval Vessels, FY 1963, H. Rept. 1406, 87th Cong., 2nd. Sess., 1962; pp. 5-6.

the purpose of a committee report is to render clear exactly what the law is intended to accomplish. Lest there be any doubts as to what the RS-70 amendment means, let it be said that it means exactly what it says, i.e., that the Secretary of the Air Force, as an official of the Executive Branch, is directed, ordered mandated and required to utilize the full amount of \$491 million authority granted to proceed with production planning and long leadtime procurement for an RS-70 weapons system.⁶²

And finally, as if to throw down a congressional gauntlet of challenge to the Executive, the report concluded that

if this language constitutes a test of whether Congress has the power to so mandate, let the test be made and let this important weapons system be the field of trial. The committee would also like to express the hope that this mandate will provide the instrument whereby the unanimity of feeling of the (armed services) committee and the Appropriations Committee can find its effectuation.⁶³

Neither the administrative direction nor the constitutional challenge by the legislative branch to the Executive Branch was left in doubt in this unusual report. Chairman Vinson's amendment to the basic bill directing an executive official to spend money (which had not yet been appropriated) was a marked departure from the normal legislative process.

The House Committee Report reviewed what it termed "recent history of congressional enactments disregarded by the executive branch." It mentioned two dramatic cases, the cancellation of a FORRESTAL supercarrier in 1950, and the impounding of \$615 million authorized for the procurement of fighter aircraft in 1949. The report continued by citing a total of thirteen instances in which congressional actions had been frustrated by noncompliance in the field of defense authorizations since 1956:⁶⁴

⁶²Ibid.

⁶³Ibid., p. 9.

⁶⁴Ibid., p. 4.

1956:	increase in Marine personnel strength	(\$46.4) millions)
1959:	increased army modernization program	(\$37.0)
	accelerated REGULUS submarine program	(\$11.0)
	HOUND DOG missile program increases	(48.0)
	MINUTEMAN missile program increases	(\$90.0)
	additional KC-135 air tankers	(\$55.6)
	additional strategic transports	(\$140.0)
1960:	maintaining marine corps strength	(\$43.1)
	NIKE-ZEUS missile procurement	(\$137.0)
	nuclear powered aircraft carrier	(\$35.0)
	National Guard construction	(\$12.1)
1961:	additional fighter aircraft	(\$97.0)
	Army reserve construction	(\$4.0)

The Secretary of Defense had reserved \$180 million from the B-70 program in FY 1962, bringing the total of the amounts listed in the committee report to \$1.6 billion.

The committee report envisioned four tasks for the RS-70 bomber. It would "observe and report on the condition of the enemy during and after initial nuclear strikes, increase the assurance of the destruction of primary targets, seek out and destroy unique targets, especially the extremely hard, mobile, or the imprecisely located targets, and provide precision, discrimination, and flexibility for the nation's strategic strike forces."⁶⁵

Additionally, the report cited the legal precedent of *Swain v. United States* (165 U.S. 553), in which the Supreme Court ruled that the constitutional powers of the President on one hand to command the Army and Navy, and the powers of Congress on the other to make rules for the governing and regulation of the land and naval forces are distinct and separate powers. The Court concluded that the President cannot evade legislative regulation, nor could Congress by regulations impair the authority of the President as Commander in Chief.

⁶⁵Ibid., p. 9.

(The committee was attempting to lend the weight of legal precedent to its case for directing the Executive Branch to spend money, but in so doing, it had picked up a two-edged sword. The same decision could be interpreted as meaning that the Congress could not by legislation impair the executive function of spending authorized and appropriated funds.)

The report concluded with an appeal to the entire House of Representatives to back the committee in this issue by stating, "when the amendment is backed by a vote of the whole House, and the whole Congress, it is a mandate."⁶⁶ By this device, the committee was attempting to co-opt the entire House into supporting the armed services committee's stand on the RS-70 issue, as well as on the constitutional issue.

Secretary McNamara took his position before the public at a press conference on 15 March 1962. In a 2500 word statement he laid out his reasoning for curtailing the RS-70 project. He observed that the B-70 version of the bomber had never enjoyed the full support of the Joint Chiefs of Staff, the Secretary of Defense, or of the President and his Scientific Advisory Committee. He noted that the B-70/RS-70 had all the vulnerabilities and disadvantages of an aircraft, with no more flexibility than a guided missile.⁶⁷

He further noted that the RS-70 was not going to be capable of carrying the stand-off ballistic missile planned for the existing B-52 bombers in inventory (the SKYBOLT missile), and that the aircraft was going to be extremely expensive, particularly when compared to the additional deterrence it would provide as "just another" bomber.

⁶⁶Ibid., p. 10.

⁶⁷New York Times, March 16, 1962.

McNamara acknowledge that the Air Force had redesignated the aircraft from B-70 to RS-70 to describe its expanded reconnaissance-strike capabilities, but pointed out that the addition of the reconnaissance capability would only add considerably to the expense of the aircraft, especially since the electronic hardware for the reconnaissance mission wouldn't be developed until 1970 at the earliest. He stated that, ultimately, if the post-strike reconnaissance capability were considered to be that much of an addition to the nation's force posture, those same reconnaissance systems could be put aboard existing B-52 aircraft just as easily.

McNamara concluded that the addition of a force of 200 RS-70 aircraft, as was proposed by the Air Force in 1961, would cost ten billion dollars, and would not appreciably change the capabilities of the nation's overall deterrent. For these reasons, he had decided to continue the program at minimal funding level for purposes of basic research. There were some possible applications from the project which might be useful in development of a supersonic transport for commercial aviation, although this had not been conclusively demonstrated.

In the week following the publication of the committee report, opposition developed rather quickly to Vinson's Amendment. The most urgent pressure against the amendment came from the members of the House Defense Sub-committee of the Appropriations Committee, because the amendment represented a challenge to the power of that committee. If the authorization bill were to become law, with the amendment directing the Secretary of the Air Force to spend \$491 million on the RS-70 program, then the appropriations process would be effectively bypassed. Worded as the authorization bill was, the Appropriations Committee would have had to appropriate the entire sum authorized in order that the authorization be effected as law.

The President quickly marshalled political support for his Administration's position on the RS-70 issue. House Speaker McCormack, House Minority Leader Charles Halleck, and Majority Leader Carl Albert were reportedly ready to oppose the Vinson Amendment when the bill reached the floor.⁶⁸ Washington editorial comment urged the House Armed Services Committee to drop the constitutional issue and to pursue the RS-70 program on its merits, as had the Secretary of Defense in his news conference.⁶⁹

Members of the House Defense Sub-committee of the Appropriations Committee conferred with President Kennedy in order to determine the best strategy to actually defeat Vinson's proposal. The President requested the House Majority Leader and the Speaker to seek a compromise with Vinson.

Chairman Vinson had the unanimous support of his committee for his amendment over the RS-70 program. Several members of the committee had expressed concern with the future of manned bombers during the hearings on the authorization bill.⁷⁰ It appeared from the hearings, however, that only the chairman himself was displeased specifically with the handling of the RS-70 program.

It must be remembered that the Democrats controlled both Houses of Congress at this time. Opposition to controversial legislation was to be expected from the minority party, the Republicans in this case, but bipartisan opposition which included the House leadership spelled real trouble for the Vinson Amendment.

⁶⁸Washington Post, March 15,17,19, 1962.

⁶⁹Ibid.

⁷⁰U.S. Congress, House, Committee on Armed Services, Hearings, Authorizing Appropriations for Aircraft, Missiles, and Naval Vessels for the Armed Services, 87th Cong., 2nd Sess., February, 1962.

On the day before House debate was to begin on the authorization bill, President Kennedy sent Chairman Vinson a letter. In this note, the President stated

With the profoundest respect for your leadership in national defense and congressional affairs, I must take this opportunity to urge your reconsideration of the language added by your committee to H.R.9751. I would respectfully suggest, that, in place of the word "directed," the word "authorized" would be more suitable to an authorizing bill (which is not an appropriation of funds) and more clearly in line with the spirit of the Constitution.

Each branch of the government has a responsibility to preserve, protect, and defend the Constitution, and the clear separation of legislative and executive powers it requires. I must, therefore, insist upon the full power and discretions essential to the faithful execution of my responsibilities as Commander in Chief.⁷¹

The President went on to acknowledge that a "spirit of comity" ought to govern relations between the two branches of government, but that this same spirit made any legislative effort to direct the executive entirely unwise.

While this letter did address itself primarily to the constitutional issue raised by the Armed Services Committee, the political import of the letter was that the President was prepared to make a fight of the matter if Chairman Vinson continued to press this issue. The President had spoken with the full authority of his office, as well as with the authority of the leader of the Democratic Party, of which Vinson was a member.

Representative Vinson also received a letter from the Secretary of Defense. McNamara indicated that he was ordering a re-study of the RS-70 program in its entirety, saying that

⁷¹Congressional Quarterly Almanac, p. 418.

this study will give full consideration to the magnitude of the (Armed Services) Committee program and the depth with which the committee has emphasized that program.⁷²

McNamara went on to state that

if technological developments related to the side-view radar, and associated data processing and display systems advance more rapidly than we anticipated...we would then wish to expand whatever proportions of any increase voted by Congress...these advances would warrant.

This was an important letter at this juncture in the dispute between Vinson and the Administration, because it gave Vinson a way out, a method of saving political face should he decide to give in to the mounting political pressure against him.

Debate on H.R. 9751, the authorization bill, began on 21 March 1962. Representative Gerald Ford (R-Mich.) led the opposition to Vinson's Amendment. He stated that he was strongly opposed to language contained in the amendment directing the Secretary of the Air Force to spend \$491 million on the RS-70 program. He argued that such language was improper for three reasons

First, it invades the responsibilities of the Commander in Chief as well as his jurisdiction as Chief Executive;

second, the language would usurp the appropriating authority of the Committee on Appropriations; and

third, the language would create inflexibility in the management of the RS-70 program.⁷³

⁷²U.S. Congress, House, Representative Ford speaking against the Vinson Amendment to the FY 1963 Defense Authorization Bill, H.R. 9751, 87th Cong., 2nd Sess., March 21, 1962, Congressional Record, p. 4715.

⁷³Ibid .

Ford's second objection was the most significant politically, and it became the rallying point for consolidating opposition to Vinson's amendment.

Ford's reference to the jurisdictional autonomy of the appropriations group touched the most sensitive congressional nerves. Legislators might combine against the President on policy issues, but they were not likely to do so at the expense of their own power in committees.⁷⁴ Ford's statement revealed that he was very jealous of the prerogatives of the Appropriations Committee, of which he was an important member, and that he felt that Vinson had overstepped the traditional jurisdiction of his own Armed Services Committee. Just as the legislative committees resent the actions of the Appropriations Committee to undo policies and to influence programs which have been authorized, so does the appropriations group resent attempts by a Legislative Committee to force appropriations.⁷⁵

Ford also rebutted Vinson's claim that the Executive Branch had a long history of ignoring the will of Congress. He produced figures which revealed that the President had followed the recommendations of Congress on twenty-eight times during the same time frame cited in the Vinson report, and that on nine of those occasions, had followed congressional direction to the letter. His point was that Presidents Eisenhower and Kennedy had followed the recommendations of Congress more often than they had chosen not to do so.⁷⁶

⁷⁴Edward A. Kolodziej, op. cit., p. 416.

⁷⁵W. J. Keefe, Morris S. Ogul, op. cit., p. 181.

⁷⁶Congressional Record, March 21, 1962, p. 4716.

The Chairman of the House Appropriations Committee followed Ford's speech with one of his own. Addressing the Chair, he stated

Mr. Chairman, I have felt that the language incorporated in the pending military authorization bill, which directed the Executive Branch to utilize \$491 million for the planning and production of the RS-70 aircraft was very unwise. The language raises serious constitutional questions and tends to bypass the regular procedures which call for direct action by the Congress on funds recommended by its appropriations committees before authorized programs may be executed.⁷⁷

Representative Mahon then amplified Representative Ford's arguments with regard to executive disregard of congressional will. He produced much more detailed figures, and recited every instance, year by year, wherein the executive departments had implemented the will of Congress, or disregarded it, since 1948.

Mahon's general conclusions, not surprisingly, were the same as Gerald Ford's, namely, that the executive departments implemented the will of Congress more often than they did not. These two speeches took much of the force from Chairman Vinson's argument.

In the face of opposition from the President, the House leadership, and the determined Appropriation Committee, Vinson capitulated and withdrew the word "directed" from his amendment. He offered to change that word to "authorize" as the President suggested. Ford objected that the amendment would be "poor grammar" with just the straight substitution of words, but Vinson replied that "the President wants 'authorize' and when the President wants something, he should get it."⁷⁸

⁷⁷Ibid., p. 4720.

⁷⁸Ibid.

With the amendment thus watered down, the House passed H.R.9751, as amended, by a vote of 404-0, with no changes made in the committee recommendations with regard to total funding authorized. One amendment was offered to require authorizing legislation for appropriations which were earmarked for research and development on the RS-70 program after December 31, 1961. This amendment carried, on a voice vote.⁷⁹

At the conclusion of House debate on the authorization bill, and after passage of the modified amendment, Vinson was philosophical. He stated on the Floor

I say that members of Congress and the public had been led to believe that here was a fight that would settle the question of separation of powers as between Congress and the Executive Branch of government.

I intend to support the bill for I believe this country must have incomparable defenses, but I deeply regret that this fight was started, for it is apparent that now it has been lost.

This is not a compromise; it is a defeat for the entire House of Representatives.⁸⁰

It was revealed that afternoon that Vinson had been invited to the White House on the previous day for a talk with the President on the RS-70 matter, after which he had agreed to water down his amendment. In a news conference following the passage of H. R. 9751, the President said that "under the American system of divided powers, only chaos could result from the attempts of one branch to impose its will on another."⁸¹

⁷⁹Congressional Quarterly Almanac, 1962; pp. 416-418.

⁸⁰Congressional Record, March 21, 1962; p. 4721.

⁸¹Washington Post, March 22, 1962; p. A1.

H.R. 9751 was sent to the Senate on March 22, 1962, for hearings before the Senate Armed Services Committee, all of which were in executive session. This committee reported the House bill only eleven days later, on 2 April. The Senate Committee reduced the amounts approved by the House from \$13,065,772,000 to a figure of \$12,969,300,000, of which \$491 million was to be available only for research and development and long leadtime planning for the RS-70 bomber. In addition, the Senate Committee incorporated all military research and development into the provisions of the original Russell Amendment.⁸²

The Senate Armed Services Committee had kept out of the controversy raised over the RS-70 bomber in the House. This was interesting in that the House Committee was essentially trying its wings under the provisions of the Russell Amendment for the first time, while the authors of that amendment, Senator Russell and his Armed Services Committee, watched developments in the House from the sidelines of the controversy. The Senate Armed Services Committee had held hearings on its version of the military procurement authorization bill (S. 2734) from January 19 through February 2, 1962.

In the course of these hearings, the Senate Committee had heard Secretary McNamara review essentially the same arguments against full development of the RS-70 bomber system that appeared in his news conference of 15 March, 1962. The committee appeared to be well satisfied with McNamara's testimony, especially when he pointed out that the RS-70 aircraft had only a very limited

⁸²Congressional Quarterly Almanac, 1962; p. 656.

capability in terms of flexibility of mission. It could not be converted to carry conventional ordnance, as could the B-52 and B-47 aircraft, and could not carry the SKYBOLT air-launched ballistic missile, as could the B-52. In addition, McNamara asserted that the RS-70 prototypes which would be built in his limited program would not be convertible to use in a program to develop a commercial supersonic transport aircraft, due to substantial configuration differences between the bomber and any transport type aircraft.⁸³

On April 11, the Senate passed its Armed Services Committee's version of H.R. 9751 unanimously, making no changes in the totals. On April 12, the House accepted the Senate's version of H.R. 9751 with all changes, and sent the authorization bill to the President for signature.

The Appropriations Committees then took up the Defense budget. The House Committee on Appropriations reported out H.R. 11,289 (H. Report 1607) in the amount of \$47,839,491,000 for fiscal year 1963. Of this total amount, \$223.9 million was slated for the RS-70. The House passed H.R. 11,289 by a 388-0 vote on April 18, with no amendments, and sent it over to the Senate.

The Senate Appropriations Committee reported H.R. 11,289 out on June 8, 1962, in the amount of \$48,429,221,000. Of this total, \$491 million was earmarked for the RS-70 program, with no particular qualifications. The Senate passed this bill with an 88-0 vote on June 13, 1962. The Conference Committee split the difference on the RS-70 appropriation, allowing \$362.6 million for that program.⁸⁴

⁸³U.S. Congress, Senate, Committee on Armed Services, HEARINGS, Department of Defense Programs and Authorization of Appropriations for Procurement of Aircraft, Missiles, and Naval Vessels by the Armed Forces, 87th Cong., 2nd Sess., 1962.

⁸⁴Congressional Quarterly Almanac, 1962; p. 602.

Of the three prototypes planned by Secretary McNamara in 1962, only two were ever built. The \$1.3 billion which the Air Force had said in 1961 would build six prototypes was able to pay for only two aircraft in 1967. McNamara's concern over the expense of the RS-70 weapons system were evidently well founded.

The two prototype aircraft rolled out at the North American Aviation plant in Los Angeles were designated XB-70, and were used for experiments in hypersonic flight. The two XB-70's were never really weapons systems, since they consisted only of airframes and power plants. The very sophisticated electronics envisioned in 1962 for the reconnaissance-strike capability were still not technically feasible when the aircraft rolled out.

XB-70 #1 was destroyed in a collision with a public relations firm's photo aircraft in 1968. The last remaining Valkyrie bomber was retired shortly thereafter and resides now at the Aerospace Museum in Texas.

ANALYSIS

In substance, the whole debate on the RS-70 tended toward terms which had very little to do with the facts of the situation. The debate over the RS-70 was cast by some in terms of bombers versus missiles. The true issue, however, was over alternative launching platforms for alternative missile systems. The Secretary of Defense made a fairly straight-forward decision in 1962, namely, that the RS-70 was neither an effective nor an economical means to accomplish the missions proposed for it.⁸⁵

The provisions of the Russell Amendment reopened the door for the Armed Services Committees of both Houses of Congress to review in depth important procurement programs proposed by the Defense Department. It was the testimony of the Air Force, which conflicted with the views of the Secretary of Defense on the B-70, that led the House Committee to challenge McNamara, by authorizing more funds for the B-70 than he had requested.

In terms of costs, the Secretary of Defense made a correct decision on the B-70/RS-70 program. Costs had gotten out of line with the funds authorized for three prototype weapons systems being able to buy only two bare-bones aircraft. A large production program would have probably encountered the same mushrooming costs as did the prototype program. This would indicate that McNamara's cost-effectiveness criteria were, in this instance, at least pointing in the right direction.

The overly enthusiastic support for the RS-70 program given by the Air Force before congressional committees points to the possibility that the Air

⁸⁵ Robert S. McNamara, op. cit., pp. 91-92.

Force was more interested in maintaining its role in strategic defense than in procuring a cost-effective weapons system. It should be noted that the Air Force Chief of Staff claimed that the \$1.3 billion authorized for the program would procure six prototypes, not, as turned out, just two aircraft.⁸⁶

The RS-70 controversy did demonstrate the need for prototype competition in major weapons systems procurement programs. The Eisenhower Administration had actually authorized weapons development level of funding for a program which had not produced even a test vehicle, and this after more than seven years of research. The same company had held the contract through the entire development period, thus there was no element of competition in the RS-70 program to provide that company with an incentive to keep costs down.

It is unclear why the House Committee seized upon the RS-70 program to challenge the Administration on defense procurement. The most likely cause was the fact that Secretary McNamara had in effect cancelled a major program after Congress had voiced support for that program. The importance of personalities cannot be overlooked, however.

In 1962, Representative Vinson was the Dean of the House of Representatives--its most senior member, and chairman of an important committee. As such, he was accustomed to getting what he wanted in the realm of military affairs. McNamara's curt cancellation of the RS-70 program very probably seemed like an affront to Chairman Vinson.

⁸⁶ On the other hand, no one could have foreseen what problems the B-70 was going to run into, pointing up once again the uncertain nature of R & D. In 1961, the Air Force had just as much chance of being right as did the Secretary of Defense.

The language of the House Report (1406) which contained the controversial "direction" language bears out this impression. The committee vote in reporting out the Authorization Bill had been unanimous, but the concern for the future of manned bombers was not so widespread in the committee as the report indicated. The strong language in the committee report was almost certainly the work of the Chairman alone, which gives credence to the impression that Vinson was highly displeased with McNamara's apparent high-handedness.

Mr. Vinson had staked the power and prestige of his committee and his own personal seniority and influence on the outcome of the RS-70 issue. In so doing, he underestimated the degree of congressional and presidential opposition that his move would encounter. Many legislators understood that the political and technical differences over the RS-70 were complex enough without forcing them into simplified and essentially misleading interpretations of Congress' constitutional role in defense policy.⁸⁷

Chairman Vinson's Amendment actually distorted the spirit of the Constitution, in that it implied legislative supremacy in matters of defense affairs. The Constitution does indeed grant to Congress the exclusive power to raise and support armies, but nowhere does it provide Congress with the procedure by which it might exclusively exercise this power.

The Vinson Amendment was a procedural distortion of congressional authority as well. Congress has sole authority to appropriate money, that is, to authorize the expenditure of money by its own officers or those in the other

⁸⁷ Edward A. Kolodziej, op. cit., pp. 414-415.

branches of the federal government.⁸⁸ In the case of the RS-70 program, The Armed Services Committee was in the unique position of attempting to force the Executive Branch to spend money it did not want to spend, and which had not been appropriated by law.

In summation, then, it can be said that Vinson's attempt to write legislation which would direct an executive official to spend money was procedurally improper, constitutionally unfounded, and a political error. It was also an isolated incident in the history of congressional action in defense affairs, and should not be used to draw any generalizations about Congress and its participation in defense policy making. A genuine link does exist, however, between Vinson's action in the RS-70 controversy and the advent of the Russell Amendment, from which a general evaluation of the effect and significance of the Russell Amendment can be made.

The direct link between the Russell Amendment and the RS-70 issue is that the Russell Amendment called into being annual review of major weapons system programs before the Armed Services Committees. More importantly, it required the enactment of legislation which dealt with specific categories of weapons for all three services, which meant that the authorization hearings would carry a great deal more weight with other congressmen than the military posture hearings which preceded the Russell Amendment procedure.

In answering the broader question of the significance of the Russell Amendment, several criteria may be employed. The first of these is whether

⁸⁸W. Leon Godshall, Principles and Functions of Government in the United States, p. 525.

or not the Russell Amendment, or action taken under it, is authorized or implied in the Constitution, and in conformity with the basic division of powers between the legislative and Executive Branches. The answer to this question is clearly affirmative. Congress has both the authority and the constitutional responsibility to authorize by law any and all programs proposed by the Executive Branch. This power becomes particularly pertinent when some of the military programs begin to acquire billion dollar price tags, as did the RS-70 weapons system.

Representative Vinson's move to force the Administration to spend \$491 million on the RS-70 weapons system was not in conformity with the basic division of powers concept, however, but rather a distortion of that concept which tended in the direction of excessive legislative power. In this context, it was not in conformity with the spirit of the Russell Amendment itself, which directed that programs required authorization and not compulsion by law.

A second question which may be asked is whether or not the Russell Amendment is helpful in providing Congress with the information it needs to discharge its basic responsibilities. Here again the answer is clearly yes. One of the fundamental purposes of the new procedure was to increase the base of knowledge in Congress on matters of defense policy, and indeed to permit members of Congress to be able to focus their attention on something more specific than an aggregated defense budget, namely, those costly weapons systems which contributed so much to the size of that budget. At the very least, the procedure permits members to get an idea of how complex a business defense procurement has become in modern times.

A qualification must be made in this regard, however, in that members of the Armed Services Committee are very probably hard-pressed to absorb the large

quantities of information which the Defense Department dishes up in the course of the authorization hearings. Another qualification which must be made is that the Defense Sub-committee of the Appropriation Committees did provide a great deal of information to Congress before the Russell Amendment. But whereas then only one sub-committee provided the bulk of the inputs into the congressional review process, now there is an additional entire committee involved.

A third question which may be asked is whether the authorization review operates in such a way as to allow the Defense Department flexibility in administering the procurement programs. In this area there could be certain disadvantages to the new procedure. One which has been mentioned is the difficulty a Pentagon contracting officer will have in negotiating a contract at a price less than the figures authorized by Congress. Having a dollar authorization attached to a weapons system makes bargaining somewhat difficult. The possibility of such a situation strengthens the argument for prototype competition before production contracts are let.

Another complicating factor is the long time span over which major weapons systems are developed and produced. The need for annual review with the attendant possibilities that the program's authorizations might run into trouble in Congress leaves the Pentagon with no assurance that major programs will be seen through to completion. The defense administrator also faces the problem of having to defend and explain the big programs in duplicate, once before the Defense Sub-committees of the Appropriations Committee, and once before the Armed Services Committee. The double presentations certainly add to

the Pentagon workload, and tend to detract from administrative discretion in managing weapons programs.⁸⁹

A fourth question is whether the authorization procedure as applied reflect the wishes of the whole Congress as a body or the wishes of just one segment of Congress. If the RS-70 controversy is any indication, the Russell Amendment reinforces the existing divisions in Congress along committee lines at the expense of overall congressional power in defense policy.⁹⁰ Opposition to Vinson's proposed amendment did arise along committee lines, between Armed Services and Appropriations. It is thus apparent that the Russell Amendment did bring the Armed Services Committee into conflict with the Appropriations defense groups over which House Committee would have the most influence on defense policy.

On the other hand, Congress as a whole listens to its expert committees in expressing consensus, and it listened to the Armed Services Committee, in the case of the FY 1963 military authorization bill, to the tune of 404-0 in the vote. Thus although the Russell Amendment does emphasize committee divisions in preparing the annual legislation, it does not interfere with the legislative process at the macro-level of debate and voting. Furthermore, the committee division emphasized by the Russell Amendment is already nothing more than the proper division of responsibility between a substantive committee

⁸⁹This problem is not unique in government. The Secretary of the Interior faces it on every hydroelectric project.

⁹⁰Edward A. Kolodziej, op. cit., p. 422.

and the Appropriations Committee. The responsibility of the Armed Services Committee does, after all, have a constitutional origin, and the Russell Amendment simply re-establishes that committee's proper role and function.

A fifth question asks whether the Russell Amendment procedure tends to strengthen and enforce the internal disciplines of the Executive Branch. There is little question that it does, inasmuch as the dual annual review requirement necessitates that the Defense Department iron out any in-house differences before going to the Hill for the review process. (There may, however, be a hidden cost in this feature, because the need for settling service differences further consolidates executive power in the office of the Secretary of Defense.)

Congress has traditionally been interested in hearing two sides to any major proposition, and the "united front" presentations by Secretary McNamara were sometimes viewed with a jaundiced eye by committee members, particularly when, as in the RS-70 case, high-ranking military officers had views which were different from the Secretary's position.

Administratively, it is proper that a final policy decision from the top be supported by all subordinates in all instances. Congressional committees, however, are rather special cases, in that members are very interested in and quite expert at surfacing subordinate opposition to high-level final decisions. Thus the tendency of the new procedure to strengthen and enforce internal discipline within the Defense Department is compromised somewhat by committee member and committee staff expertise in probing the depth of internal support that the major procurement programs have from the military services.

A final criterion is whether or not the review procedure is suitable for execution by a legislative body. The Russell Amendment certainly added to the workload of the Armed Services Committees, and added as well to the work of

Congress as a whole in that it must consider two major legislation packages on defense procurement. At the same time, however, the new procedure doubles congressional exposure to defense matters, and authorization hearings and their reports give the individual member perspective of defense programs in relation to national defense strategy, whereas the appropriation sub-committee hearings tended to set defense programs in perspective of the national budget. In the appropriation hearings, defense programs are evaluated against a price tag, while in the Armed Services review, programs are evaluated against their contribution to national defense.

The Valkyrie bomber controversy was an important milestone in the evolution of Congress' role in national defense policy. It served to establish the limits of the review procedure instituted by the Russell Amendment in 1959, and it marked the return of the Armed Services Committees, particularly in the House, to the mainstream of the legislative process.

The Russell Amendment itself gave to the Armed Services Committees an expanded opportunity to review and pass judgement on a sector of national policy for which they have a long standing responsibility. While this procedure may have added to the tensions which exist between a substantive committee and the Appropriations Committee, the increased awareness and knowledge of defense affairs which the review procedure provides should well offset its political drawbacks, and eventually make Congress more effective in fulfilling its major role in the formulation of national defense policy.

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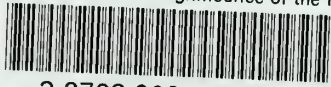
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