



Free markets. Real solutions.

R STREET POLICY STUDY NO. 210  
November 2020

## CONGRESS AND FOREIGN POLICY: AN ACTIONABLE AGENDA FOR EMPOWERED ENGAGEMENT IN 2021

By Ryan Dukeman

### INTRODUCTION

Over the last century, Congress has been consigned to a bit-player role in the politics of foreign policy, out-matched by the “imperial presidency.”<sup>1</sup> From the creation of a professionalized Foreign Service in 1924 to the Reciprocal Trade Agreements Act of 1934, and from the Gulf of Tonkin Resolution to the Authorization for Use of Military Force (AUMF), Congress has—with some variation—gradually ceded foreign policy power to the presidency, washing its hands of the risky business of global leadership. Attempts to claw back high-profile powers of war and peace—like the War Powers Resolution—have mostly failed to restore the clear primacy Congress held for most of the 19<sup>th</sup> century. The rise of a large and professional national-security bureaucracy, information classification and three decades of abdicating oversight of new intelligence agencies

1. Sarah Binder et al., “The Imperial Presidency is Alive and Well,” *Foreign Affairs*, Jan. 21, 2020. <https://www.foreignaffairs.com/articles/2020-01-21/imperial-presidency-alive-and-well>.

### CONTENTS

Introduction	1
Declining Opportunities for Headline Congressional Leadership	3
Structural Drivers of Decline	4
Collective Action	4
Relative Absence of Interest Groups	4
Presidential First-Mover/Agenda-Setting Power	5
Risk-Aversion Incentive to Delegate	5
Information Asymmetries	5
Bipartisan Consensus Amid Polarized Dysfunction	5
Empowered Engagement is a Better Standard to Judge Modern “Legislative Diplomacy”	6
Reform Recommendations for Empowered Engagement	7
Enhance the Capacity of Legislative Diplomatic Institutions	7
New Congressional Advisory Structures	7
In-source Foreign Policy Reform with a Voice for Congress	8
Explore a Foreign Service Act	9
State and Foreign Assistance Authorization Acts	9
Conclusion	10
About the Author	10

further mark executive victories over congressional foreign policy capacity.<sup>2</sup>

Yet, while few would argue congressional primacy is feasible or wise in the modern international environment, the “sole organ” doctrine of exclusive, presidential power in foreign affairs is not a historical truism.<sup>3</sup> Instead, the degree of congressional control over foreign affairs is a function of the times—the nature of the international environment, the speed required for policy response (especially in times of crisis) and internal coherence in the legislative branch, among other factors.

Since the inauguration of President Donald Trump, Congress has demonstrated an increasing desire—institutionally and on the part of individual members—to engage in foreign policy, even in conflict with the presidency. As early as February 2017, there was a reported uptick in “diplomatic damage control” as leading members of Congress met with heads of government and foreign ministers from traditional U.S. allies like Australia and Canada amid Trump’s bellicose rhetoric.<sup>4</sup> Also

2. See, e.g., Michael J. Hogan, *A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954* (Cambridge University Press, 1998); Amy Zegart, *Flawed by Design: The Evolution of the CIA, JCS, and NSC* (Stanford University Press, 1999); Douglas T. Stuart, *Creating the National Security State: A History of the Law that Transformed America* (Princeton University Press, 2008); Ryan Dukeman, “Crucibles of Crisis: The Creation of the House and Senate Select Committees on Intelligence, 1954-1977,” Princeton Politics Working Papers, 2020. [https://www.dropbox.com/s/29rmfd3lpolkwx5/Crucibles%20of%20Crisis\\_INS%20Submission.docx?dl=0](https://www.dropbox.com/s/29rmfd3lpolkwx5/Crucibles%20of%20Crisis_INS%20Submission.docx?dl=0).

3. See, e.g., Aaron Friedberg, *In the Shadow of the Garrison State: America’s Anti-Statism and Its Cold-War Grand Strategy* (Princeton: Princeton University Press, 2000); Louis Fisher, “The ‘Sole Organ’ Doctrine,” The Law Library of Congress, August 2006. <https://fas.org/sgp/eprint/fisher.pdf>.

4. Jennifer Steinhauer, “Trump Has Provocative Words for Allies. Congress Does Damage Control,” *The New York Times*, Feb. 3, 2017. <https://www.nytimes.com/2017/02/03/us/politics/trump-has-provocative-words-for-allies-congress-does-damage-control.html?smid=fb-nytimes&smtyp=cur&r=1>.

in 2017, both Houses passed sanctions on Russia—with veto-proof supermajorities—for its interference in the 2016 presidential elections, over President Trump’s explicit opposition.<sup>5</sup>

More recently, both houses passed a resolution introduced by Sen. Bernie Sanders (I-VT), which invoked the War Powers Resolution to end U.S. support for the war in Yemen.<sup>6</sup> Similarly, the House passed the NATO Support Act with a large bipartisan majority (357-22), which would bar the executive branch from withdrawing from the North Atlantic Treaty Organization (NATO).<sup>7</sup> This act built on non-binding resolutions of support for the alliance passed by both houses in 2017.<sup>8</sup> Other efforts that did not make it out of both chambers include a House-passed resolution to limit military strikes on Iran, and the proposed Libya Stabilization Act, which would sanction leaders from Turkey and Russia over the Libyan civil war.<sup>9</sup>

Yet, in many of these cases—especially those which seek legislative change of specific, substantive foreign policy matters—Congress’s efforts have met with little success. The Yemen resolution, for example, did not survive a presidential veto, and the Senate never took up the House’s NATO Support Act. The administration has continued to sell weapons to Saudi Arabia, using emergency authorization to go around Congress, which was likely to be more reserved in the wake of the assassination of Jamal Khashoggi. On many foreign policy fronts, proposals, single-chamber passages and resolutions-to-nowhere have remained the norm. Even after an impeachment saga sparked by Trump’s maneuvers in foreign affairs, many political scientists argue “the imperial presidency [remains] alive and well.”<sup>10</sup>

A recent analysis argued that it was “precisely Congress’s growing frustration with Trump’s foreign policy that appears to be motivating” recent assertions of authority.<sup>11</sup> Similarly,

“the Senate’s GOP majority” has generally been “more likely to agree with House Democrats on foreign policy than with the Trump administration.”<sup>12</sup> Yet, Congress has often failed to claw back the authority it seeks, which speaks to the structural difficulties of congressional foreign policy.<sup>13</sup>

However, even as bipartisan leaders in Congress sought more influence on foreign policy, they have also defended the institutions and bureaucracies within the executive branch that contribute to its primacy in foreign affairs. For example, the Senate Appropriations Subcommittee on State and Foreign Operations (SACFO) rejected the administration’s repeated proposals to cut the International Affairs Budget, which funds civilian foreign policy agencies. The SACFO argued these proposals were born of a “doctrine of retreat” that would only serve “to weaken America’s standing in the world.”<sup>14</sup>

The 117th Congress—even if divided—is likely to continue these trends: should President Trump be reelected, a Democratic chamber would continue to seek to constrain his “America first” international order; and under a Biden administration, members of both parties may seek to be active partners in the enormous task of rebuilding America’s alliances, international standing and foreign policy agencies.<sup>15</sup> The latter “make-or-break test for” American foreign policy would require all hands on deck, including those of Congress.<sup>16</sup>

Yet, in this high-stakes window for reform, Congress should strengthen its engagement on foreign policy in ways most likely to succeed. For example, a contentious reclamation of headline influence would run headlong into structural factors advantaging executive-driven foreign policy, and thus be more likely to fail. Instead, this report synthesizes scholarship on congressional diplomacy and interbranch foreign policy relations and suggests reforms that are more likely to

5. Matthew Nussbaum and Elana Schor, “Trump signs Russia sanctions bill but blasts Congress,” *Politico*, Aug. 2, 2017. <https://www.politico.com/story/2017/08/02/trump-signs-bipartisan-russia-sanctions-bill-241242>.

6. Mark Lander and Peter Baker, “Trump Vetoes Measure to Force End to U.S. Involvement in Yemen War,” *The New York Times*, April 16, 2019. <https://www.nytimes.com/2019/04/16/us/politics/trump-veto-yemen.html>.

7. Curtis Bradley and Jack Goldsmith, “Constitutional Issues Relating to the NATO Support Act,” *Lawfare*, Jan. 28, 2019. <https://www.lawfareblog.com/constitutional-issues-relating-nato-support-act>.

8. Ibid.

9. Robbie Gramer and Lara Seligman, “U.S.-Iran Tensions Fuel New War Powers Debate in Congress,” *Foreign Policy*, Jan. 9, 2020. <https://foreignpolicy.com/2020/01/09/united-states-iran-tensions-war-powers-debate-congress-sulejmani-trump>; Jack Detsch and Amy MacKinnon, “Congress Pushes for Sanctions on Turkey, Russia Over Libyan War,” *Foreign Policy*, July 28, 2020. <https://foreignpolicy.com/ezproxy.princeton.edu/2020/07/28/us-congress-pushes-sanctions-turkey-russia-libya-war>.

10. Binder et al. <https://www.foreignaffairs.com/articles/2020-01-21/imperial-presidency-alive-and-well>.

11. Joshua Geltzer, “So This Is What Congress’ Getting Involved in Foreign Affairs Looks Like,” *Just Security*, Feb. 14, 2019. <https://www.justsecurity.org/62591/congress-involved-foreign-affairs>.

12. Daniel Flatley, “Congress Flexes Foreign-Policy Muscle with Rebukes of Trump,” *Bloomberg*, Dec. 10, 2019. <https://www.bloomberg.com/news/articles/2019-12-10/congress-flexes-foreign-policy-muscle-with-more-rebukes-of-trump>.

13. Ibid.

14. Lindsey Graham, “Report on Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2018.” U.S. Senate Committee on Appropriations, Sept. 7, 2017, p. 6. <https://www.congress.gov/congressional-report/115th-congress/senate-report/152/1>.

15. See, e.g., Ryan Dukeman, “Retrenching Foreign Policy: Delegitimation, Agency Reform, and the Trump-Tillerson ‘Redesign’ of the State Department and USAID,” Princeton Politics Working Papers, 2020. [https://www.dropbox.com/s/6ac7435vtb0dmb/Redesign\\_APD\\_v5.0.pdf?dl=0](https://www.dropbox.com/s/6ac7435vtb0dmb/Redesign_APD_v5.0.pdf?dl=0); Daniel W. Drezner, “Present at the Destruction: The Trump Administration and the Foreign Policy Bureaucracy,” *The Journal of Politics* 81:2 (April 2019), pp. 723–730. <https://www.journals.uchicago.edu/doi/full/10.1086/702230>; Democratic Staff, “Diplomacy in Crisis: The Trump Administration’s Decimation of the State Department,” U.S. Senate Committee on Foreign Relations, July 28, 2020. <https://www.foreign.senate.gov/imo/media/doc/Diplomacy%20in%20Crisis%20--%20SFRC%20Democratic%20Staff%20Report.pdf>; “The Dereliction of American Diplomacy,” *The Economist*, Aug. 13, 2020. <https://www.economist.com/ezproxy.princeton.edu/international/2020/08/13/the-dereliction-of-american-diplomacy>.

16. William J. Burns, “A Make-or-Break Test for American Diplomacy,” *The Atlantic*, April 6, 2020. <https://www.theatlantic.com/ideas/archive/2020/04/a-make-or-break-test-for-american-diplomacy/609514>.

successfully and productively augment Congress’s capacity for “empowered engagement” in foreign affairs.

## DECLINING OPPORTUNITIES FOR HEADLINE CONGRESSIONAL LEADERSHIP

According to James Lindsay of the Council on Foreign Relations (CFR), there are three different types of foreign policy over which Congress exerts differing degrees of influence: structural, strategic and substantive/crisis.<sup>17</sup> Given the need for quick responses to emerging crises, Congress—a slower, collective-action body built on deliberation—has little sustained influence over crisis foreign policy. For instance, between 1972 and 1993 Congress only overrode two presidential vetoes on foreign policy legislation.<sup>18</sup> Instead, “because ‘substantive legislation is a flawed policy-making tool,’ too slow, inflexible, and often unenforceable to consistently have a meaningful impact on [foreign] policy,” congressional reformists interested in foreign affairs have historically met with much more success on strategic and structural aspects.<sup>19</sup>

Strategic foreign policy—which sets the broad goals and policy objectives but allows the executive branch to determine the specifics—has proven a middle ground. The classic example of strategic foreign policy is authorizing sanctions for human-rights violators, terrorist-financiers and other entities that act against U.S. interests as Congress defines them. Congress authorizes the sanctions and determines how they should be used; however, an executive branch fact-finding process makes the final decision on which specific individuals and organizations meet the criteria.<sup>20</sup>

Yet, strategic foreign policy leadership is where Congress’s decline has been most precipitous. For example, through the so-called “Fast Track” authority Congress has delegated its ability to set trade policy to presidential agreements over which it pledges to take an up-or-down vote without amendments.<sup>21</sup> Most egregiously, Congress has not declared war since 1942, and has washed its hands of the Global War on Terror, allowing administrations of both parties to use al Qaeda-era authorizations to hunt terrorist organizations

that didn’t exist on 9/11, target fighters who were in diapers when the Twin Towers fell and wage war in countries thousands of miles from where the attacks were planned.<sup>22</sup>

The decline of strategic foreign policy powers has made the importance of structural foreign policy—traditionally Congress’s greatest area of advantage—clearer than ever. Structural foreign policy refers to Congress’s ability, via authorizations and appropriations, to set the process by which foreign policy is made and implemented by executive-branch actors, in order to systematically skew its outcomes toward those favored by Congress. While there is no Administrative Procedures Act for foreign policy, structure and substance are still closely related, and Congress can shape the outputs of foreign policy by setting the rules by which the executive branch makes it.<sup>23</sup>

For example, under the Trade Act of 1974, Congress mandated that the U.S. Trade Representative “consult before, during, and after the negotiation of all trade agreements with specific members of Congress” who are appointed to a congressional trade advisory body in the executive branch.<sup>24</sup> Therefore, even as Congress delegated the power to negotiate increasingly complex and multilateral trade deals to the White House, it inserted leading congressional voices into those internal executive-branch negotiations and debates. This system has moved presidential trade agreements closer to Congress’s preferences, particularly regarding human rights and labor protections.<sup>25</sup>

A similar story holds in the case of The Helsinki Commission, the first joint congressional-executive policy body created in 1976, which has “systematically yielded policies beyond what the State Department alone would have created, especially in the area of human rights.”<sup>26</sup> Overall, structural foreign policy recognizes that by:

controlling processes, political leaders assign relative degrees of importance to the constituents whose

17. James Lindsay, *Congress and the Politics of U.S. Foreign Policy* (Johns Hopkins University Press, 1994).

18. *Ibid.*, p. 90.

19. Ryan Dukeman, “Legislative Diplomacy: The Impact of Congressional Reform on the Role of Congress in Foreign Policy, 1970-2015,” Princeton University, 2017, pp. 6, 94. [https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis\\_Dukeman\\_vLB.pdf?dl=0](https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis_Dukeman_vLB.pdf?dl=0).

20. See, e.g., Dukeman, “Legislative Diplomacy,” p. 47. [https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis\\_Dukeman\\_vLB.pdf?dl=0](https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis_Dukeman_vLB.pdf?dl=0); Jordan Tama, “Forcing the President’s Hand: How the US Congress Shapes Foreign Policy Through Sanctions,” *Foreign Policy Analysis* 16:3 (July 2020), pp. 397-416. <https://academic.oup.com/fpa/article-abstract/16/3/397/5539839>; Benjamin Alter, “Sanctions Are Congress’s Path Back to Foreign Policy Relevance,” *Lawfare*, March 27, 2018. <https://www.lawfareblog.com/sanctions-are-congresss-path-back-foreign-policy-relevance>.

21. See, e.g., Ian Ferguson, *Trade Promotion Authority* (TPA), Congressional Research Service, June 21, 2019. <https://fas.org/sqp/crs/misc/IF10038.pdf>.

22. Matthew C. Weed, *A New Authorization for Use of Military Force Against the Islamic State: Issues and Current Proposals*, Congressional Research Service, Feb. 21, 2017. <https://fas.org/sqp/crs/natsec/R43760.pdf>; Andrew Rudalevige, “When did Congress authorize fighting in Niger? That’s an excellent question,” *The Washington Post*, Nov. 11, 2017. <https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/11/when-did-congress-authorize-fighting-in-niger-thats-an-excellent-question>.

23. See, e.g., Matthew McCubbins et al., “Administrative Procedures as Instruments of Political Control,” *Journal of Law, Economics, and Organization*, 3:2 (1987), pp. 243-277. [https://www.jstor.org/stable/764829?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/764829?seq=1#metadata_info_tab_contents); Graham Allison and Morton Halperin, “Bureaucratic Politics: A Paradigm and Some Policy Implications,” *World Politics* 24 (1972), pp. 40-79. [https://www.jstor.org/stable/2010559?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/2010559?seq=1#metadata_info_tab_contents); Morton Halperin et al., *Bureaucratic Politics and Foreign Policy*, (Brookings Institution Press, 2006), II.

24. Ryan Dukeman, “Congress and trade policy: Time to refresh the trade advisory system?”, LegBranch.org, June 20, 2018. <https://www.legbranch.org/2018-6-20-congress-and-trade-policy-time-to-consider-a-reformed-congressional-advisory-system>.

25. *Ibid.*

26. Dukeman, “Legislative Diplomacy,” p. 45. [https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis\\_Dukeman\\_vLB.pdf?dl=0](https://www.dropbox.com/s/s4lip2xo5teqidn/Thesis_Dukeman_vLB.pdf?dl=0).

interests are at stake in an administrative proceeding and thereby channel an agency's decisions toward the substantive outcomes that are most favored by those who are intended to be benefitted by the policy.<sup>27</sup>

In short, structure and outcome are intrinsically linked in an executive branch deliberative process that, particularly in foreign policy where interagency overlap is the norm, tends toward bargaining and consensus. By shaping the process and privileging congressional voices, then, Congress can and has swung outcomes in its favor, even in policy processes dominated by executive branch actors.

Yet, structural foreign policy powers are not without limitations. For example, Congress typically funds the International Affairs budget at roughly the level and distribution the president requests, is reluctant to scrutinize the defense budget and has not passed a State Department Authorization Act since 2002.<sup>28</sup> Thus, of the three congressional foreign policy domains, structural foreign policy has the highest-potential, yet remains the most-underutilized.

Unfortunately for Congress, oversight hearings—one of the main tools to gather information on which to base changes in structural policy—have atrophied. Oversight hearings allow Congress to police the workings of the national security bureaucracies, as well as assess and deliberate on emerging strategic threats around which foreign policy should be organized on a longer-term basis.<sup>29</sup> For example, in 2008, the time spent on foreign relations hearings was down by nearly two thirds from 1970s peaks, and has not been replaced by additional time spent in executive sessions or other private forms of oversight.<sup>30</sup> Given this decline in the “police patrol” type of oversight—in which Congress regularly surveys agencies for wrongdoing or the need for change—Congress has become increasingly dependent on “fire alarms,” i.e. activist interest groups signaling where oversight should be directed. This is a difficult ask given the paucity and skewed nature of interest groups in foreign policy.<sup>31</sup> As Sen. Richard Durbin (D-IL) recently described, oversight and scrutiny is especially difficult on questions of war powers or immediate

security, where the rationale is often: “I’d just rather blame the president if it turns out bad.”<sup>32</sup>

On each of these fronts, Congress’s foreign policy powers are weak, weakening or both. This reality results from several structural factors beyond most members’ individual control, as the next section details.

## STRUCTURAL DRIVERS OF DECLINE

The decline of foreign policy powers is often blamed on decisions made by Congressional members—a hesitancy to reign in the presidency, disinterest in foreign affairs or the departure of key internationalist members. Yet, viewed over the longer-term sweep of history, it is clear several structural factors, rather than individual decisions, bear the brunt of responsibility.

### Collective Action

The difficulties of collective action in a polarized, bicameral process challenge Congress’s ability to exercise leadership. This is especially true in foreign policy as its interagency nature—not shared by domestic agencies with tighter jurisdictional lines—further fractures congressional stakeholders.<sup>33</sup> For example, roughly 100 committees and subcommittees, oversee pieces of the Department of Homeland Security (DHS).<sup>34</sup> In short, it is more difficult to reach an agreement on policy decisions with dozens of horizontal stakeholders than within an organized, hierarchical apparatus.

### Relative Absence of Interest Groups

When it comes to policy-making, “structural politics is interest group politics.”<sup>35</sup> Since most voters do not care about the nuances of agency structures or the policy processes, active pressure from regulated or motivated interest groups is critical to sustained engagement and attention from most members of Congress, especially those not personally motivated on foreign policy. Even with structural foreign policy as Congress’s greatest tool for influence, the relative absence of foreign policy interest groups provides little incentive for most members to pay attention to the bureaucratic plumbing of

27. McCubbins et al., p. 244. [https://www.jstor.org/stable/764829?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/764829?seq=1#metadata_info_tab_contents).

28. Kori Schake, *State of Disrepair: Fixing the Culture and Practices of the State Department* (Hoover Institution Press, 2012).

29. Linda Fowler, *Watchdogs on the Hill: The Decline of Congressional Oversight of US Foreign Relations* (Princeton University Press, 2015).

30. Ibid, pp. 29-34.

31. Ibid, pp. 132-168; Matthew McCubbins and Thomas Schwartz, “Congressional Oversight Overlooked: Police Patrols versus Fire Alarms,” *American Journal of Political Science* 28:1 (February 1984), pp. 165-179. [https://www.jstor.org/stable/2110792?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/2110792?seq=1#metadata_info_tab_contents).

32. Catie Edmondson, “In Bipartisan Bid to Restrain Trump, Senate Passes Iran War Powers Resolution,” *The New York Times*, Feb. 13, 2020. <https://www.nytimes.com/2020/02/13/us/politics/iran-war-powers-trump.html>.

33. Jon C. Pevehouse and William G. Howell, *While Dangers Gather: Congressional Checks on Presidential War Powers* (Princeton University Press, 2007).

34. Henry Willis, “Streamlining Congressional Oversight of DHS,” RAND Corporation, July 29, 2014. <https://www.rand.org/blog/2014/07/streamlining-congressional-oversight-of-dhs.html>.

35. Terry Moe, “The Politics of Bureaucratic Structure,” in John Chubb and Paul Peterson, eds., *Can the Government Govern?* (Brookings Institution Press, 1991), p. 269.

foreign policy when their time could be spent on dozens of other, more electorally lucrative issues.<sup>36</sup>

### Presidential First-Mover/Agenda-Setting Power

In 1908, political scientist Woodrow Wilson wrote that “initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely.”<sup>37</sup> During the 20th century, this first-mover advantage rapidly increased. The delegation of trade agreements, the post-1945 reconceptualization of war as a United Nations (UN) “police action” and the replacement of treaties with “executive agreements” reinforced the power of the president to set the terms of foreign policy debate, define its agenda and issue contours which left Congress to react and respond.<sup>38</sup> With modern foreign policy taking place at the speed of a tweet, Congress has often been a willing partner in its own emasculation, happier to react than lead given these structural realities.<sup>39</sup>

### Risk-Aversion Incentive to Delegate

A lack of clear, timely information makes foreign policy decision-making, especially in moments of crisis, highly uncertain: Will U.S. intervention stop atrocities, or prolong suffering? Do opposition leaders really share our values, or will they be fighting us in a generation? Uncertainty over input-output-outcome relationships like these provide a strong disincentive for Congress to make affirmative choices on foreign policy, particularly on security issues.<sup>40</sup>

One need only consider, for example, the dynamics behind President Barack Obama’s proposal for Congress to vote on war powers authorization for U.S. airstrikes against The Islamic State (ISIS) in 2015. Despite members of both parties decrying the administration’s use of 9/11-era authorizations to fight a terrorist group that did not exist when those resolutions were passed, the Republican-controlled Congress never brought the proposed 2015 Authorization for Use of Military Force (AUMF) up for a vote.<sup>41</sup> This abdication of an opportunity for congressional input came despite President

Obama explicitly agreeing that the legislative branch had an active role to play in the fight against ISIS, and that an ISIS-specific AUMF would be preferable to the use of existing 2001 authorizations and allow for public debate over the proposed campaign.<sup>42</sup> Thus, even when directly presented with the opportunity to more actively shape war powers and security policy, members still face strong headwinds and an incentive to delegate to executive-branch decision-making.

### Information Asymmetries

After World War II, uncertainty in foreign policy also helped spark the explosive growth of a largely classified national security state, with tens of thousands of dedicated public servants operating out of the spotlight to generate information about overseas conditions, policy impacts and actors’ intentions.<sup>43</sup> However, Congress did not experience a similar transformation. As a result, Congressional oversight—the limited capacity to independently generate reliable information about foreign policy—has made Congress dependent on the executive branch for briefings and information that shape its own deliberations, furthering Congress’s reactive status.<sup>44</sup> When much of this information is classified or otherwise inaccessible, Congress is left little choice but to ‘trust the experts,’ which leaves even structural national-security reforms dependent upon guidance from the agencies themselves.<sup>45</sup>

### Bipartisan Consensus Amid Polarized Dysfunction

Finally, the ‘bipartisan consensus’ on foreign policy, which favors a muscular internationalism that actively expands the community of free-market democracies. Ironically, this type of consensus yields little reason for Congress to address foreign affairs issues hands-on.<sup>46</sup> If Congress wanted to avoid direct questions of war, logically, it would direct its foreign policy leadership toward the nature of the international order and U.S. grand strategy, instead. Yet, historically, there has been minimal ideological difference between Congress

36. Zegart, *Flawed by Design*.

37. Woodrow Wilson, *Constitutional Government in the United States* (Transaction Publishers, 2002), p. 77.

38. See, e.g., Curtis Bradley et al., “Executive Agreements: International Lawmaking Without Accountability?,” *Lawfare*, Jan. 9, 2019. <https://www.lawfareblog.com/executive-agreements-international-lawmaking-without-accountability>.

39. Kevin Kosar, “Foreword,” in *Congress and Foreign Affairs: Reasserting the Power of the First Branch*, R Street Institute, Aug. 12, 2020, p. 4. <https://www.rstreet.org/wp-content/uploads/2020/08/Final-v2-Congress-and-Foreign-Affairs.pdf>.

40. Matthew Green, “Challenging the President’s War Powers: The Role of Speakers of the House,” Woodrow Wilson International Center for Scholars: Is Congress Resurgent on War Powers?, September 2007.

41. Jeremy Herb, “What happened last time Congress tried to pass a war authorization,” *CNN*, April 7, 2017. <https://www.cnn.com/2017/04/07/politics/congress-obama-war-authorization/index.html>.

42. Office of the Press Secretary, “Letter from the President—Authorization for the Use of United States Armed Forces in connection with the Islamic State of Iraq and the Levant,” Press Release, Feb. 11, 2015. <https://obamawhitehouse.archives.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection>.

43. Michael Hogan, *A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954* (Cambridge University Press, 1998).

44. Casey Burgat, “Congressional Oversight,” in *Congress and Foreign Affairs: Reasserting the Power of the First Branch*, R Street Institute, Aug. 12, 2020. <https://www.rstreet.org/wp-content/uploads/2020/08/Final-v2-Congress-and-Foreign-Affairs.pdf>.

45. Amy Zegart, *Eyes on Spies: Congress and the United States Intelligence Community* (Stanford: Hoover Institution Press, 2011); Zegart, *Flawed by Design*.

46. For further reading on the rise of this consensus post-Cold War see, Hal Brands, *Making the Unipolar Moment: US Foreign Policy and the Rise of the Post-Cold War Order* (Cornell University Press, 2016); Joshua Shiffrin, “NATO Enlargement and US Foreign Policy: The Origins, Durability, and Impact of an Idea,” *International Politics* 57 (2020), pp. 342-370. <https://link.springer.com/article/10.1057/s41311-020-00224-w>.

and the president on these topics of international order, as support for U.S. military alliances, global free trade and multilateral leadership cut across party coalitions. This dampened the incentive for Congress to develop the institutional muscles needed to prevail in a major clash on foundational foreign policy postures with the executive branch, which they have faced with the Trump administration.<sup>47</sup>

Amidst what has been termed “the perpetual campaign,” obstruction becomes rational when both parties expect to take control of one or more chambers each election, which has only persistently been the case since roughly 1980.<sup>48</sup> In particular, under divided government—especially a fractured Congress, with each party controlling one chamber—the expected outcome is inaction. Thus, a fractured Congress faces unique barriers to internal coordination on policy positions even when it might disagree with executive branch actions, as inter-chamber and partisan conflicts make collective action exceedingly unlikely.

### EMPOWERED ENGAGEMENT IS A BETTER STANDARD TO JUDGE MODERN “LEGISLATIVE DIPLOMACY”

While there has been a growth of foreign policy interest groups and a surge in the number of national security professionals running for Congress, the coronavirus and its economic fallout have strongly, and rightly, refocused Congress’s attention toward domestic relief, recovery and renewal.<sup>49</sup> Further, there is no obvious path forward to deal with classification and information bottleneck, especially as the Director of National Intelligence and the Secretary of State move to restrict in-person briefings and systematically quash subpoenas, respectively.<sup>50</sup> And as frontier technologies like AI and cybersecurity become a growing locus of international competition, Congress’s deliberative nature will be even less suited to substantive, fast-moving national security-policy crises.

---

47. See, e.g., Drezner, <https://www.journals.uchicago.edu/doi/full/10.1086/702230>; Robert Jervis et al., *Chaos in the Liberal Order: The Trump Presidency and International Politics in the 21st Century* (Columbia University Press, 2018); Iskander Rehman, “Rise of the Reactionaries: The American Far Right and U.S. Foreign Policy,” *The Washington Quarterly*, 40:4 (2017), pp. 29-48. <https://www.tandfonline.com/doi/full/10.1080/0163660X.2017.1406706>.

48. Frances Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (University of Chicago Press, 2016).

49. See, e.g., Robbie Gramer, “Anguished by America’s Decline, More Foreign-Policy Wonks Run for Congress,” *Foreign Policy*, June 18, 2020. <https://foreignpolicy.com/2020/06/18/2020-elections-congress-trump-america-global-standing-anguished-by-americas-decline-more-foreign-policy-wonks-run-for-office>.

50. Nicholas Fandos and Julian E. Barnes, “No More In-Person Intelligence Briefings for Congress, Intelligence Chief Says,” *The New York Times*, Aug. 29, 2020. <https://www.nytimes.com/2020/08/29/us/politics/election-security-intelligence-briefings-congress.html>; Catie Edmonson, “House Panel Moves to Hold Pompeo in Contempt of Congress,” *The New York Times*, Aug. 28, 2020. <https://www.nytimes.com/2020/08/28/us/politics/house-pompeo-contempt-of-congress.html>.

Historically, legislative diplomacy has taken two main forms: interparliamentary assemblies (IPAs), and peer-to-peer legislative strengthening operations.<sup>51</sup> However, the success of Congress’s continued participation in legislative diplomacy depends on three factors:

- Choosing relatively niche areas of foreign policy
- Prioritizing positive-sum foreign affairs influence through direct, diplomatic operations overseas (over interbranch zero-sum fighting for traditional foreign policy influence domestically)
- Quickly institutionalizing initiatives via connections to leadership or key committee and funding posts, so they outlive a particular patron, champion or “entrepreneur”

For example, in 1990, members of Congress pushed peer countries to agree to establish the Organization for Security and Co-operation in Europe (OSCE) Parliamentary Assembly (PA) in the Charter of Paris for a New Europe. While the OSCE operates on unanimity, the OSCE PA operates on majority rule, so members of Congress have frequently used the PA to push policies otherwise unlikely to be prioritized in the main organization, principally dealing with human rights and religious freedom.<sup>52</sup>

These areas, of course, are far from front-page news. By working through well-institutionalized, legislative, diplomatic channels, congressional foreign policy entrepreneurs have been able to avoid some of the collective-action and executive-resistance issues that make traditional foreign policy influence so hard to come by in Congress.<sup>53</sup> These types of subtler influence are nearly always missed in typical “resurgent Congress” debates among scholars and analysts.<sup>54</sup>

Rather than tilt quixotically at windmills, Congress should reconceptualize the standard on which its foreign policy leadership is judged, one where it can better play to underappreciated institutional advantages. Policy influence on headline issues of the day—war and peace and major treaties among them—is an ill-suited metric on which to judge Congress’s foreign policy performance in the modern international system. Instead, a new standard should be considered: empowered engagement. Empowered engagement includes the following elements:

---

51. Ryan Dukeman, “Can congressional diplomacy work for grand strategy?,” Leg-Branch.org, June 25, 2020. <https://www.legbranch.org/can-congressional-diplomacy-work-for-grand-strategy>.

52. Ibid.

53. Binder et al., <https://www.foreignaffairs.com/articles/2020-01-21/imperial-presidency-alive-and-well>.

54. Dukeman, <https://www.legbranch.org/can-congressional-diplomacy-work-for-grand-strategy>.

- Optimized congressional institutional capacity to act on legislative diplomacy
- Active, regular structural foreign policy (e.g. through authorizations)
- Information awareness and analytic capacity to evaluate executive foreign policies
- Institutionalized channels for individual foreign policy entrepreneurs to act

Rather than headline policy influence, the modern inter-branch foreign policy environment favors legislative diplomacy, structural foreign policy, congressional advisors and individual foreign policy entrepreneurs. It does not favor substantive foreign policy legislation, treaty-making or war powers. The latter are properly measured against the standard of policy influence (i.e. was Congress able to shape the substance of U.S. foreign policy in line with its preferences), and the results are not favorable. The former, however, do not map cleanly onto this standard of measurement. For example, the relationship between the structure of the trade policymaking process or the number of bureaus Congress authorizes in the State Department, and day-to-day headline policy achievements or failures, are difficult to trace, especially in real-time. Yet, by determining the structure of the foreign policy process, bolstering its own institutional capacity for diplomatic and development operations, and giving interested members clear channels to act on their foreign policy interests, Congress can do much more to set the broader terms by which foreign policy is determined and executed.

To summarize, empowered engagement is a better internal standard by which Congress can judge its foreign affairs impact than policy influence. Policy influence, the traditional metric, over-weights institutional grounds where Congress currently plays at a structural disadvantage; and under-values the importance of areas for direct involvement in foreign affairs that have historically proven more effective. While policy influence is likely to remain a relevant standard for scholars trying to measure the relative power of each branch, Congress would do well to keep empowered engagement channels front-of-mind, as they are more likely to succeed and play to the legislative branch’s institutional advantage.

## REFORM RECOMMENDATIONS FOR EMPOWERED ENGAGEMENT

Given this new standard and the channels it creates for Congress to most effectively invest in bolstering its foreign policy, Congress should undertake the following reforms. Specifically, Congress should focus its efforts toward improved legislative diplomacy, shaping the process and outcomes of executive-branch policymaking procedures and seize the opportunity to lead on institutional foreign policy reform.

## Enhance the Capacity of Legislative Diplomatic Institutions

Money and manpower are not sufficient conditions for legislative diplomacy, but they are certainly necessary. At a time when democracy is in a “recession” worldwide, Congress can enhance its recent historical legacy of effectively bolstering the capacity to democratize legislatures, to check executive power, represent constituents and craft public policy.<sup>55</sup>

Yet, the main legislative diplomatic agencies—the House Democracy Partnership (HDP) and the Open World Leadership Center (OWLC)—each have only a handful of staff members. For example, the HDP only recently hired a permanent Executive Director—it was previously run part-time and ad-hoc by staff from its co-chairs’ personal offices.<sup>56</sup> For its part, the OWLC has fewer than 10 full-time staff.<sup>57</sup> In today’s era of democratic backsliding, surely a growing list of partner legislatures, legislators and staff could benefit from scaling up these programs. Congress should meet this demand by supplying legislative diplomatic functions with appropriate resources to do their job. This recommendation is not to say that Congress should remove any development programs, even in governance, away from executive agencies. Rather, their efforts are most effective when they complement, rather than substitute, executive operations, by focusing on Congress’s institutional areas of expertise (e.g. legislative operations) in a positive-sum relationship with executive stakeholders.

In particular, to emphasize and benefit from the complementary nature of this relationship, new staff for these agencies should come primarily from development backgrounds with executive branch service, either through increased agency details or direct hiring. Bringing together experts on legislative operations from congressional support arms like the Congressional Research Service or the Library of Congress (as has traditionally been done), could augment Congress’s basic operational capacity for legislative diplomacy without engendering high-profile policy conflict with the executive branch.

## New Congressional Advisory Structures

Historically, as Congress delegated more power to the executive branch in policy areas like trade, it also structured the internal deliberative process by which those policies were made, to skew their outcomes toward congressionally favored positions. This included, at times, making members

55. Larry Diamond, “Facing Up to the Democratic Recession,” *Democracy Journal* 26:1 (January 2015), pp. 141-155. <https://www.journalofdemocracy.org/articles/facing-up-to-the-democratic-recession>.

56. House Democracy Partnership, “About—HDP Staff,” U.S. House of Representatives. <https://hdp.house.gov/contact/email>.

57. “Staff Contact,” Open World Leadership Center, last accessed Oct. 26, 2020. <https://www.openworld.gov/about-us/staff-contact>.

of Congress or staff formal advisors within internal executive-branch deliberations.<sup>58</sup> Given that interagency bargaining of this kind tends toward consensus-seeking, Congress can shape policy even in executive-dominated spaces in two ways: by setting the structure and inserting congressional voices into the policymaking process.<sup>59</sup>

One emerging policy area that mirrors this historical trend, and thus where Congress should seek to have its voice heard on the inside, is frontier technologies/digital authoritarianism. Given that this issue cuts across traditional bureaucratic siloes of domestic and foreign policy—and affects both policy and government operations—it resembles the way Congress and the executive branch reconceptualized trade policymaking in the 20<sup>th</sup> century.<sup>60</sup>

While Congress as a whole resembles a gerontocracy in its understanding of new technologies, some individual members have in fact shown remarkable nuance and leadership on critical issues of emerging technologies as fields of great power competition, economic disruption and security threats.<sup>61</sup> For example, Congress as an institution has taken steps to outsource expertise on technology, mandating the National Security Commission on AI and the National Cyberspace Solarium Commission.<sup>62</sup> While these groups have effectively brought in expertise on frontier technologies, they have minimized the voice of Congress in this critical, cross-domain policy space—while the Solarium Commission includes three members of Congress, the Commission on AI in particular contains none.

Congress should empower individual voices of both parties to flourish by participating in executive policymaking processes as advisors. For example, as with trade, Congress could mandate the participation of several advisory groups—consumers, privacy advocates, technical specialists, industry representatives, and intelligence and security analysts, as well as leading voices from Congress itself—in White House-level policy formation on issues including 5G and artificial

intelligence.<sup>63</sup> This would help to democratize the executive-dominated process of national and international tech policymaking compared to its current form, while allowing congressional thought leaders on the issue to circumvent institutional constraints to their engagement.

### In-source Foreign Policy Reform with a Voice for Congress

Historically, the United States has largely outsourced foreign policy reform to think tanks as a major vehicle to get their ideas for reform into the policy conversation.<sup>64</sup> The vibrancy of the U.S. think tank industry provides an important source of new ideas for foreign policy. Their smaller, more flexible teams are able to more easily conduct and advocate long-term integrative research than those within the executive bureaucracy. For members of Congress, think tanks can provide a non-partisan forum for “blue-ribbon” efforts chaired by members of both parties, signaling policy expertise and elevating the profile of bipartisan proposals.

However, given that structural foreign policy is the ripest channel for democratically elected officials to influence foreign policy, it is important that Congress have sufficient capacity to assess, evaluate, and, if needed, create new policy proposals and alternatives internally.<sup>65</sup> No organization—including a think tank—is purely objective or free from political pressures.<sup>66</sup> To be most effective at structuring U.S. foreign policy agencies and updating the bureaucracy in the face of changing international circumstances and policy priorities, Congress needs the independent capacity to evaluate outside ideas and generate its own.

Potential policy reforms are far from herculean: the House could mirror the Senate Foreign Relations Committee and develop a subcommittee on the State Department and the United States Agency for International Development (USAID) Management; both the House and the Senate could add an explicit focus on organizational structure; appropriately staffing the Congressional Research Service to explicitly conduct a biennial review of foreign policy organization across and between branches; or activating the new House Diplomacy Caucus as a convener, perhaps of a conference on foreign policy structure and reform, to bring in ideas from government, think tanks and outside academics to promote

---

58. Dukeman, “Legislative Diplomacy,” Chapter 2. [https://www.dropbox.com/s/s4lip2xo5teqjdn/Thesis\\_Dukeman\\_v1LB.pdf?dl=0](https://www.dropbox.com/s/s4lip2xo5teqjdn/Thesis_Dukeman_v1LB.pdf?dl=0).

59. Allison and Halperin. [https://www.jstor.org/stable/2010559?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/2010559?seq=1#metadata_info_tab_contents).

60. Garrett Berntsen & Ryan Dukeman, “Winning the AI Revolution for American Diplomacy,” draft manuscript.

61. See, e.g. Shira Ovide, “Congress Doesn’t Get Big Tech. By Design.” *The New York Times*, July 29, 2020. <https://www.nytimes.com/2020/07/29/technology/congress-big-tech.html>; Kim Zetter, “Of Course Congress Is Clueless About Tech—It Killed Its Tutor,” *Wired*, April 21, 2016. <https://www.wired.com/2016/04/office-technology-assessment-congress-clueless-tech-killed-tutor/>; Jeff Stone, “With Will Hurd’s retirement, Congress loses a key cybersecurity advocate,” *Cyberscoop*, Aug. 2, 2019. <https://www.cyberscoop.com/will-hurd-cybersecurity-issues/>; Tom Simonite, “What’s This? A Bipartisan Plan for AI and National Security,” *Wired*, July 30, 2020. <https://www.wired.com/story/bipartisan-plan-ai-national-security/>.

62. “About,” National Security Commission on Artificial Intelligence, June 24, 2020. <https://www.nsc.ai.gov/about/about>; “About,” Cyberspace Solarium Commission, last accessed Oct. 20, 2020. <https://www.solarium.gov/about>.

---

63. See, e.g., President Donald J. Trump, “National Strategy to Secure 5G,” White House, March 2020; President Donald J. Trump, “Maintaining American Leadership in Artificial Intelligence,” Executive Order 13859, Feb. 11, 2019.

64. Ellen Laipson, “Think Tanks: Supporting Cast Players in the National Security Enterprise,” *The National Security Enterprise: Navigating the Labyrinth* (Georgetown University Press, 2017).

65. Lindsay.

66. Daniel W. Drezner, *The Ideas Industry: How Pessimists, Partisans, and Plutocrats are Transforming the Marketplace of Ideas* (New York: Oxford University Press, 2017).

research in these topics, which has languished since the 1970s.<sup>67</sup>

Currently, Congress plays a notably underwhelming role in conversations on to how to design the structure, process and voice of foreign policy deliberations. This is especially true given how important these areas are to congressional influence on foreign affairs outcomes. However, the simple tweaks detailed above could re-center the conversation toward the Hill.

### Explore a Foreign Service Act

In recent months, the conversation around rebuilding the State Department has exploded, including important, bipartisan proposals and fact-finding reports from Congress.<sup>68</sup> Given the institutional and organizational dimension of this rebuild, there is no getting around an important role for Congress within the department.<sup>69</sup>

Structural foreign policy is the bread and butter of Congress's engagement, yet it has not passed a Foreign Service Act since 1980. At the same time, skilled people are the main asset to diplomacy, yet the recent State Department "redesign" efforts have caused a human capital exodus.<sup>70</sup> These two problems present an opportunity for one to solve the other. Without going into specific recommendations beyond the scope of this report, areas of long-standing and immediate need that a new Foreign Service Act could address include:

- Two-career diplomatic households<sup>71</sup>
- Rethinking exam structures that were intentionally

designed to keep out diplomats of color<sup>72</sup>

- Adjusting the skillsets that are selected for in recruitment and enhanced in training (e.g. functional expertise in data science, frontier technologies, climate and public health)<sup>73</sup>
- Enhancing the Foreign Service Institute so the State Department can match the military in making more than the sum of its parts<sup>74</sup>
- A "GI Bill for Diplomacy," that would augment the ranks and skills of the Foreign Service while drawing from more diverse socioeconomic backgrounds<sup>75</sup>
- Rationalizing the third-rail of the State Department's three personnel systems—Foreign Service, Civil Service, and appointees and contractors—that create internal rivalry for coveted leadership positions
- Limiting the penetration of political appointees into lower levels of headquarters leadership roles<sup>76</sup>
- Mid-career lateral hiring authorities for temporarily needed surges of specific skills
- Clarifying the relative importance of regional, functional and multilateral expertise and service history in promotional evaluations
- Addressing the difficulties in developing civil service multilateral expertise between the United States Mission to the United Nations (USUN) and Main State under the UN Participation Act

### State and Foreign Assistance Authorization Acts

Analogously, are Authorization Acts for the State Department and for foreign assistance, which Congress has not passed since 2002 and 1986, respectively. In those intervening decades, the international environment and foreign policy landscapes have changed dramatically: The Soviet Union and international terrorism are no longer top of mind; and transnational issues like climate change, corruption, public health and democratic backsliding have risen on the agenda.

67. Christopher M. Jones, "Bureaucratic Politics and Organizational Process Models," Oxford Research Encyclopedia, March 2010. <https://oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-2>.

68. See, e.g., Elizabeth Warren, "Revitalizing Diplomacy: A 21st Century Foreign Service," Medium, June 28, 2019, <https://medium.com/@teamwarren/revitalizing-diplomacy-a-21st-century-foreign-service-2d9d195698f>; Democratic Staff, <https://www.foreign.senate.gov/imo/media/doc/Diplomacy%20in%20Crisis%20--%20SFRC%20Democratic%20Staff%20Report.pdf>; Kori N. Schake and Brett McGurk, "Compete with China? Support a G.I. Bill for Diplomacy," *The Washington Post*, May 13, 2019. [https://www.washingtonpost.com/opinions/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/ons/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/79823b80-7330-11e9-8be0-ca575670e91c\\_story.html](https://www.washingtonpost.com/opinions/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/ons/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/79823b80-7330-11e9-8be0-ca575670e91c_story.html).

69. Joaquin Castro, "We Need a New Generation of Foreign Policy Leadership," Medium, July 21, 2020. <https://medium.com/@congressmanjoaquincaastro/castro-we-need-a-new-generation-of-foreign-policy-leadership-2fd7427f1e0b>; Council on Foreign Relations, "Virtual Meeting: A Conversation with Representative Ami Bera," Aug. 11, 2020. <https://www.cfr.org/event/virtual-meeting-conversation-representative-ami-bera>; William J. Burns, "How to Rebuild the State Department," *The Atlantic*, March 12, 2020. <https://www.theatlantic.com/ideas/archive/2020/03/how-rebuild-state-department/607837>; Ryan Dukeman, "Rebuilding Diplomacy for a Post-COVID-19 World," Medium, Aug. 12, 2020. <https://medium.com/international-affairs-blog/fsf-pandemic-politics-diplomacy-post-covid-19-688298417fa4>.

70. Dukeman, "Retrenching Foreign Policy," pp. 31-34. [https://www.dropbox.com/56ac7435vtb0dmb/Redesign\\_APD\\_v5.0.pdf?dl=0](https://www.dropbox.com/56ac7435vtb0dmb/Redesign_APD_v5.0.pdf?dl=0).

71. See, e.g., Megan Meline, "Foreign Service Life Disruptive for Families," *NPR*, July 26, 2006. <https://www.npr.org/templates/story/story.php?storyId=5582909>.

72. Christopher Richardson, "The State Department Was Designed to Keep African-Americans Out," *The New York Times*, June 23, 2020. <https://www.nytimes.com/2020/06/23/opinion/state-department-racism-diversity.html>.

73. Dukeman, "Rebuilding Diplomacy for a Post-COVID-19 World." <https://medium.com/international-affairs-blog/fsf-pandemic-politics-diplomacy-post-covid-19-688298417fa4>.

74. Schake.

75. Schake and McGurk. [https://www.washingtonpost.com/opinions/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/ons/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/79823b80-7330-11e9-8be0-ca575670e91c\\_story.html](https://www.washingtonpost.com/opinions/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/ons/compete-with-china-support-a-gi-bill-for-diplomacy/2019/05/13/79823b80-7330-11e9-8be0-ca575670e91c_story.html).

76. See, e.g., "Assistant Secretaries: Foreign Service Career vs Other Appointments," American Foreign Service Association, Sept. 22, 2020. <https://www.afsa.org/assistant-secretaries-foreign-service-career-vs-other-appointments>; Robert J. Sylverman, "President's Views: How to Find the Next Bill Burns," *Foreign Service Journal*, April 2015. <https://www.afsa.org/how-find-next-bill-burns>.

In the absence of congressional authorizations, adapting foreign policy agencies to new challenges has largely been an executive-driven process, even though on paper structural foreign policy of this type is Congress's most potent tool. Without specific congressional authorization, for example, the State Department created new bureaus for Counterterrorism; Conflict and Stabilization Operations; Energy and Natural Resources; and Science and Technology, among others. It was only in 2017, during the reviled Tillerson "Redesign," that Congress even required the executive branch to notify it of proposed new, consolidated or disestablished bureaus and offices. While the "Congressional Notification (CN)" process gave Congress more room for input on the USAID Transformation and stalled some of Tillerson's agenda, it fundamentally put Congress in a reactive, rather than agenda-setting, position on issues of agency structure.<sup>77</sup>

Authorizations for diplomacy and development would go far in reasserting Congress's leadership on structural foreign policy, and would mirror the Hill's relative leadership on defense structure. Currently, the National Defense Authorization Act (NDAA) is the only must-pass annual legislation, a reality that itself further militarizes foreign policy by housing new programs and initiatives—even if otherwise diplomatic or development-related in nature—under military auspices.<sup>78</sup>

Among organizational reforms, Congress should consider vastly expanding the scope and use of monitoring and evaluation (M&E) techniques in the State Department. These processes are widely used in defense and development to assess the effectiveness of programs and policies, incorporate learning and adaptation into the organizational culture and could also help build a constituency for diplomacy in Congress, by showing which programs are working and which are not when requesting funding on the Hill. As it considers structural reforms, Congress would do well to also give consideration to making the State Department more data-driven and evidence-based than it was when current decision-making processes were designed in the early 20<sup>th</sup> century.<sup>79</sup>

## CONCLUSION

The bureaucratic plumbing of foreign policy has been on the front pages and at the top of mind for policymakers recently in ways not seen in nearly 50 years. At the same time, an unorthodox foreign policy worldview in the administration

has sparked independent congressional activism on foreign policy by members of both parties.<sup>80</sup> Unfortunately, much of this activism, while well-intentioned, has been directed at the least-likely channels to successfully exercise Congress's leadership in foreign affairs.<sup>81</sup>

Taking a longer view of the history of congressional foreign policy illuminates sub-headline channels that have proven much more effective in empowering Congress to engage on foreign policy, rather than try to reclaim the policy dominance Congress enjoyed in the 1880s. These undervalued, effective channels are legislative diplomacy and structural foreign policy.

Structural changes in the international environment, as well as in Congress itself, make it unlikely that simply trying harder will yield a new AUMF, War Powers enforcement or the return of ratified treaties. Action-oriented members too often overlook these longer-term trends, beyond any one individual's ability to change, including growing first-mover advantages for the executive. Unfortunately, foreign policy's low-issue priority for most members the majority of the time, as well as persistent information asymmetries, together render classical influence reclamation more and more like tilting at windmills.

In place of these well-intentioned but low-probability efforts, Congress should structure its foreign policy activism around a new standard that takes advantage of more favorable institutional turf, and derives reforms to capitalize on those areas of comparative congressional advantage: empowered engagement. This standard aims for a Congress that has optimized its institutional capacity to engage with the structure of the foreign policy process independently via effective, complementary legislative diplomacy. In addition, empowered engagement has more independent ability to assess, evaluate and generate foreign policy proposals on substance and structure. By emphasizing structural foreign policy and legislative diplomacy, an empowered engagement agenda would enhance core congressional capacity in its areas of comparative foreign policy advantage, rather than aim for primacy on substantive areas that are decreasingly realistic.

## ABOUT THE AUTHOR

**Ryan Dukeman** is a PhD student at Princeton University and a founding senior fellow at FP21, where he researches institutional reform in U.S. foreign policy. Previously, he was a consultant for the U.S. Department of State, where he helped found its Center for Analytics.

---

77. Dukeman, "Retrenching Foreign Policy." [https://www.dropbox.com/s/6ac7435vtb0dmbrr/Redesign\\_APD\\_v5.0.pdf?dl=0](https://www.dropbox.com/s/6ac7435vtb0dmbrr/Redesign_APD_v5.0.pdf?dl=0).

78. Charles Stevenson, "How the NDAA Helps Militarize American Foreign Policy," *The National Interest*, July 27, 2020. <https://nationalinterest.org/blog/buzz/how-ndaa-helps-militarize-american-foreign-policy-165600>.

79. For further reading on evidence-based foreign policy, see "Less Art, More Science: Transforming U.S. Foreign Policy through Evidence, Integrity, and Innovation," FP21, Sept. 8, 2020, <https://www.fp21.org/less-art-more-science>.

---

80. Jordan Tama, "Anti-Presidential Bipartisanship in U.S. Foreign Policy Under Trump: The Case of the International Affairs Budget," American University working paper, June 24, 2019. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3393170](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3393170).

81. Dukeman. <https://www.legbranch.org/can-congressional-diplomacy-work-for-grand-strategy>.