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THE 1994 AGREED FRAMEWORK WITH NORTH KOREA: A CASE OF CONGRESSIONAL OPPOSITION TO AN EXECUTIVE AGREEMENT AND PRESIDENTIAL FOREIGN POLICY

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ABSTRACT

American Presidents have increasingly used executive agreements to negotiate deals with other countries instead of formal treaties. Executive agreements conveniently require much less congressional approval than a formal treaty, but also may not be as binding for future administrations. President Clinton made such an agreement in the form of the Agreed Framework with North Korea in 1994 to halt a potential North Korean nuclear weapons program in exchange for the US providing aid and light water reactors to North Korea. As an executive agreement, Congress could not directly block the deal, but opponents of the deal in Congress still found ways to create problems for the agreement throughout Clinton's presidency. This paper examines the relationship between Congress and the Presidency regarding executive agreements and Congress' ability to disrupt the agreement through the case of congressional opposition to the 1994 Agreed Framework with North Korea.

INTRODUCTION

In 1994, the United States and the Democratic People's Republic of Korea (DPRK or North Korea) signed the "Agreed Framework" to freeze much of North Korea's nuclear program and begin international inspections in exchange for international aid to North Korea. At the time of its signing, the Agreed Framework was considered a victory for diplomacy that averted a potential war, but the deal had many ardent critics in the US, especially in Congress. Opponents of the framework in Congress frequently challenged President Clinton through various legislative avenues, seeking to derail or alter the agreement (Hathaway & Tama, 2004).

In the US, foreign policy is usually thought of as being dominated by the executive branch. Throughout the twentieth century, the presidency has increasingly seemed to wield unilateral authority in international relations and foreign affairs, while Congress seems to generally sit on the sidelines (Seo, 2015). However, Congress is far from toothless in matters of foreign policy, and contrary to Arthur Vandenberg's famous speech, politics often does not stop "at the water's edge" (Arthur Vandenberg, <http://www.senate.gov/>).

President Clinton negotiated the Agreed Framework without involving

Congress, but the legislative branch did not resign itself to a spectator role. Republicans in Congress used their powers over budget and oversight to try to cripple the agreement in its implementation or add new conditions that would require the President to renegotiate with North Korea. Additionally, critics could use Congress as a platform to appeal to public opinion. Protecting the Agreed Framework from Congressional attacks became a regular fight for President Clinton, and he increasingly found himself on the defensive throughout his presidency (Lee & Miles, 2004). The disputes between President Clinton and his Congressional opponents serve as an example of Congress' role in US foreign policy. The interactions between Congress and the Presidency over the Agreed Framework with North Korea shed light on how Congress pushes its own foreign agenda and Congress' role in shaping international executive agreements, which seem to give the Presidency more control in foreign policy.

EXECUTIVE AGREEMENTS IN US FOREIGN POLICY

Although the US Constitution explicitly requires a two-thirds majority approval from the Senate to ratify a treaty, there are many types of international agreements that are not formal treaties, and the president is relatively free to negotiate such deals under his/her executive authority. There is no mention of executive agreements in the Constitution, but presidents have used them in some form since the early years of American government. Nowadays hundreds of executive agreements are created each year with little or no congressional input in their formation, and President Clinton's negotiation of the Agreed Framework is an example of such agreements (Margolis, 1998). This expansion of unilateral executive action developed mainly as a practical measure to increase government efficiency not a plot to grab power for the presidency. It is much easier to negotiate with one person and his/her advisors than with a 535-member body of differing views and goals (Caruson & Farrar-Myers, 2007). However, Congress has not been completely removed from the picture when it comes to foreign policy and non-treaty agreements. Congress can inject itself into international agreements that have been made by the executive branch through its constitutional powers of budget and oversight.

The President may negotiate and form international agreements alone, but the actual implementation of the agreements will usually require regular funding and possible domestic action, which falls within the realm of Congress. In some ways, the separation of powers in the US government allows for Congress to have a larger role in influencing foreign policy and international agreements than the legislative bodies of other countries. Bringing an international agreement before Congress allows senators and representatives who strongly disagree with the president to make their own demands and try to attach added conditions to the agreement's implementation, which may force the President to renegotiate the agreement or potentially render it so unworkable that the agreement must be scrapped entirely

(Lee & Miles, 2004). Foreign governments are sometimes frustrated by the fact that the US President must separately acquire congressional approval after a negotiated agreement is signed and finalized. Officials from other countries often do not fully understand the American political system, and it can add excessive strain to international negotiations (G. Adams, personal communication, April 5, 2016). The Agreed Framework faced many attempts from congressional dissenters to use legislative mechanisms to change the agreement or delay its implementation, which rapidly became an exceedingly irritating problem for both President Clinton and the North Korean state that signed the Agreed Framework with the US.

THE 1994 AGREED FRAMEWORK

In March 1993, North Korea announced its intention to formally withdraw from the Nuclear Non-Proliferation Treaty (NPT) after the International Atomic Energy Agency (IAEA) demanded access for further inspections beyond North Korea's officially declared facilities. The announcement created fear of a nuclear crisis on the Korean Peninsula, provoking US-North Korea negotiations overseen by the United Nations Security Council. The negotiations between the two countries became incredibly tumultuous and frantic over the next year and a half. The negotiations appeared to break down, and the North Korean delegation infamously threatened that the South Korean capital of Seoul would turn into a "sea of fire" (Ha & Hwang, 2015, p. 10). Hope for a peaceful agreement was crucially saved when an emergency visit by former President Jimmy Carter to North Korea in June 1994 broke the diplomatic deadlock, but the sudden death of North Korean leader Kim Il Sung the following month complicated matters. The two sides managed to reach a rough outline for an agreement on North Korea's nuclear program in August 1994, and the US and North Korea formally signed the Agreed Framework in Geneva, Switzerland on October 21, 1994 (Ha & Hwang, 2015) (Roehrig & Wessel, 2011).

North Korea agreed to freeze its alleged nuclear weapons program and return to the NPT and comply with IAEA inspections. Additionally, North Korea would cease construction of the heavy water reactors at Yongbyon and Taechon, which could potentially be used to create weapons grade plutonium, and place its 8,000 existing fuel rods into sealed storage (Roehrig & Wessel, 2011). In exchange, the US would provide two smaller light water reactors and international financing for their construction as well as annual shipments of 500,000 tons of fuel oil to offset lost energy production until the light water reactors were constructed. The US also tentatively agreed to ease economic sanctions and pursue normalization of diplomatic relations with North Korea, which some hoped might be the beginning of less hostile relations between the two countries in the post-Cold War era (Manning, 1998).

The US, Japan, and the Republic of Korea (ROK or South Korea) established the Korean Peninsula Energy Development Organization (KEDO) to fund and oversee the construction of the light water reactors and the oil shipments

to North Korea. South Korea agreed to assume most of the costs for the construction of the light water reactors, which would begin in 1996, and Japan pledged substantial funding for the reactor project as well. Although the US initially pledged fewer funds than the other two countries, KEDO was still heavily dependent on US funding, particularly for supplying the scheduled oil shipments. Strong US support was crucial for ensuring that the promises and conditions of the Agreed Framework were upheld (Ha & Hwang, 2015).

CONGRESSIONAL POLITICS AND THE AGREED FRAMEWORK

The Agreed Framework with North Korea quickly became a very polarizing subject in US politics. Supporters hailed the Agreed Framework as a major diplomatic achievement for the Clinton Administration that prevented the threat of a nuclear North Korea. However, the Agreed Framework found many outspoken critics among the rival Republican Party who believed that President Clinton had given up too much in deal and should have pursued tougher sanctions against North Korea instead of supplying aid to an oppressive and untrustworthy dictatorship (Ha & Hwang, 2015). The agreement's congressional opponents sought to press for a stricter deal or disrupt the agreement completely using their legislative authority.

President Clinton was not constitutionally bound to seek congressional approval for the Agreed Framework because it was an executive agreement. In fact, the President did not interact with Congress at all in forming the agreement, and met little resistance in the Democratic-controlled Congress for the Agreed Framework (Seo, 2015). Opponents of the negotiations did achieve a small legislative victory with the passage of an amendment by Senator Bob Dole to the Foreign Operations Appropriations bill before the signing of the Agreed Framework in August 1994. The amendment made aid to North Korea conditional on presidential certification that North Korea had stopped its nuclear weapons program, but the amendment had little effect on the negotiations or the agreement. The amendment did not practically restrict the Clinton Administration in any real way in crafting the Agreed Framework, and President Clinton essentially ignored the amendment (Lee & Miles, 2004). Congressional opponents were largely unable to force the President's hand during the negotiation and signing of the Agreed Framework.

The political situation in the US changed dramatically with the 1994 congressional election. A few weeks after the Agreed Framework had been signed in Geneva, the Republican Party took control of both the House of Representatives and the Senate. The sweeping Republican election victory ushered many conservative representatives and senators into Congress who were staunchly opposed to the policies of the Democratic President, including the Agreed Framework (Seo, 2015). The Clinton Administration was suddenly on much more uncertain ground with the Agreed Framework domestically.

The new Republican-controlled Congress' most significant challenge to the

Agreed Framework was over funding. Although, President Clinton did not need to consult Congress in the establishing the agreement, US funding for KEDO to implement the agreement fell under the authority of Congress' power of the purse. US funding for KEDO was already behind from the beginning since KEDO did not exist when the relevant appropriations bill for 1995 was passed so there was no allocated funding for the organization. President Clinton had to reprogram funding for the Department of Defense to cover the first oil shipment to North Korea to the chagrin of Congress (Lee & Miles, 2004).

In 1996, Republicans in Congress attempted to cut the \$25 million requested for KEDO down to \$13 million, but President Clinton adamantly pledged to veto any appropriations bill that was short of the full requested amount, and divisions among between moderate and conservative Republicans in the Senate enabled Senate Democrats to secure the full \$25 million for KEDO (Seo, 2015).

Funding for KEDO became an annual battle with Congress for the Clinton Administration with each new appropriations bill. Over time, the President had less political capital to pressure Congress to approve funding for KEDO. From 1997-2000, the Clinton Administration accepted compromises in which Congress approved substantially less funding for KEDO than requested, but President Clinton made up the deficit in funding by reprogramming funding from elsewhere using section 614 of the Foreign Assistance Act of 1961, which allows the President to relocate funding to foreign aid in matters of national security (Lee & Miles, 2004). The lengthy arguments between Congress and the President delayed US funding for KEDO, whose problems were only further exacerbated by unexpected increases in the cost of operations and Japan and South Korea delaying their funding because of their own disputes with North Korea. With Congress' intransigence, the Clinton Administration could not secure enough funding to meet the new costs and turned to other countries for help but still fell short, requiring KEDO to borrow money. Oil shipments to North Korea were often delayed, as was construction of the promised light water reactors. In 1998, oil shipments were temporarily halted because KEDO used its available funds to pay off its debt (Ha & Hwang, 2015). The delays and budget shortfalls stressed the already tenuous situation with North Korea, leading to anger and frustration (and possibly provocative military exercises) from North Korea that strained the Agreed Framework (Ha & Hwang, 2015). Congressional Republicans never managed to stop the President from acquiring funding for KEDO, but their opposition in appropriations battles did prevent KEDO from receiving crucial funding, which significantly weakened the Agreed Framework as the US could not fulfill its commitments per the agreement.

In addition to challenges on funding, congressional Republicans tried to disrupt the Agreed Framework with legislative oversight by insisting on adding stricter or expanded measures to the deal or asserting that North Korea was secretly continuing its nuclear program. Many critics of the agreement accused North Korea of cheating from almost the moment the deal was signed. North Korea's secretive

reputation and often belligerent behavior helped Republican arguments against North Korea's untrustworthiness in adhering to the agreement. Republicans in Congress seized on intelligence reports that suggested North Korea was working on a nuclear program even though the Agreed Framework only stipulated that North Korea cease its nuclear weapons program and the construction of heavy water reactors (Hathaway & Tama, 2004). A New York Times report stating that US intelligence noticed high levels of activity at a North Korean bunker prompted Congress to threaten to block funding until the site was inspected in 1998. The threat forced the Clinton Administration to begin months of negotiations in which North Korea eventually agreed to allow US inspections of the site in exchange for food aid. Inspections of the site found no evidence of a nuclear program, but many Republicans criticized the concessions of aid that the Administration offered in the negotiations (Hathaway & Tama, 2004).

Congressional Republicans also attempted to add conditions related to ballistic missiles and pressure the President to expand the scope of the Agreed Framework. North Korea's surprise test-firing of a missile that flew over Japan in 1998 created public concern about the danger of a North Korean attack and led Congress to criticize the Clinton Administration's negotiations with North Korea for not addressing North Korea's ballistic missile program. Congress formed a commission headed by former Secretary of Defense Donald Rumsfeld to review North Korea's missile capabilities. The Rumsfeld Commission concluded that North Korea could have intercontinental ballistic missiles in five years contrary to the official CIA estimates that North Korea would not have such capabilities by at least 2010. Using the Rumsfeld Commission report, Congress passed legislation requiring President Clinton to appoint a North Korea policy coordinator and intensified criticism for lack of action on North Korea's ballistic missile program. After the appointment of William Perry as coordinator, the Clinton Administration again returned to the negotiating table with North Korea on another matter beyond the original scope of the Agreed Framework. The two countries reached a quick agreement, leading to North Korea announcing that it would suspend missile tests. The US also agreed to partially lift economic sanctions (Hathaway & Tama, 2004). Congressional efforts to add oversight and their own demands to negotiations with North Korea may not have weakened the Agreed Framework itself as much as threats to funding, but they certainly enabled Congress to impose its foreign policy goals regarding North Korea onto the Clinton Administration, changing the focus of the US agenda for North Korea and, in many ways, creating added difficulties for the international agreement.

Congressional challenges to the Clinton Administration over North Korea only intensified over the course of Clinton's presidency. Congressional opponents did not manage to break up the Agreed Framework, but trying to adhere to the minimum promises of the agreement became a struggle for the President. President Clinton ultimately backed off from his plans to build on the deal; most economic

sanctions were not lifted, normal diplomatic relations were not established, and the President put aside plans to personally visit North Korea (Hathaway & Tama, 2004). The Agreed Framework itself survived the entirety of Clinton's tenure as president (albeit weakened) despite congressional efforts, but after Clinton left office, President George W. Bush scrapped the Agreed Framework and its promises in 2002 amid accusations that North Korea had secretly continued to develop its nuclear weapons program (Gusterson, 2008).

CONCLUSION

In the US, the President does have an inherent advantage over Congress when it comes to foreign policy, but Congress is not left without any recourse, and the case of the Agreed Framework demonstrates that fact. Though unable to defund KEDO, Congress made certain that its disapproval was felt through delayed appropriations measures and underfunding that forced the President to shift funds and significantly disrupted the implementation of the agreement. Congress was also able to successfully pressure the President to act on its concerns regarding North Korea's trustworthiness and force the Administration to further negotiate several additional points to preserve the original agreement. Congress ultimately did not have enough power to end the Agreed Framework, but Congress critically weakened the implementation of the agreement and stopped the Agreed Framework from becoming a stepping stone to greater diplomatic progress with North Korea as per President Clinton's foreign policy goals. The President can exercise some degree of unilateral authority in foreign policy through executive agreements, but Congress can use funding, oversight, and public opinion to shape certain aspects of international agreements in the implementation stage and partially achieve its own foreign policy goals even in the face of Presidential resistance.

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